Supreme Court, U.S.
FILED

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No.: ~~OFFICE OF THE CLERK~~

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA
OCTOBER TERM, 1993

==========

VATHSALA SRINIVASAN,
PETITIONER,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, LOS ANGELES COUNTY, SOUTHEAST DISTRICT (NORWALK),
RESPONDENT

RIO HONDO COMMUNITY COLLEGE DISTRICT,
REAL PARTY IN INTEREST

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA,

SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
P.O. Box 430
Colton, California 92324

Telephone: (909) 824-3332

25 pp

QUESTIONS PRESENTED

1. Do the provisions of 9 USCS § 10 (a-d), FCRP Rule 60 (b), this Court's holdings in U.S. v. Farragut, Lyle v. Rodgers, Davy's Ex'rs v. Faw, Carnochan & Mitchel v. Christie, Williams v. Paschall, Commonwealth Coatings Corp. v. Continental Cas. Co. & Wilko v. Swan and holdings of other United States Courts of Appeals in Bonar v. Dean Witter Reynolds, Inc., Metal Products Workers Union v. Torrington Co., San Martine Compania De Navegacion, S.A. v. Saguenay Terminals, Ltd. apply in the instant Case that warrant vacation of the arbitration award that has been entered in this Case and taxing of costs against the defendant? (Ref: Appendix, pp. 7, 19-27, 54-55, 105-113, 147-161, & 214-217).

2. Do the provisions of Amendment IV, § 1 and Amendment XIV, § 1 of the United States Constitution and, this Court's holdings in Bumper v. State of N.C., Whiteley v. Warden, Wyo. State Penitentiary, Gouled v. U.S., Marron v. U.S., Go-

Bart Importing Co. v. U.S., and Grau v. U.S. apply in the instant Case that warrant vacation of the Superior Court's orders of November 13, 1992 and January 8, 1993? (Ref: Appendix, pp. 3-4, 27-28, 55-56, 64-66, 113-119, 161-164 & 182-206).

3. Do the provisions of Amendment XIV, § 1 of the United States Constitution apply in the instant Case that warrant vacation of the Superior Court's order of May 26, 1993? (Ref: Appendix, pp. 5, 29-30, 56-58, 64-66, 119-127, 164-166 & 207-213).

4. Do the provisions of 18 USCS § 401, 28 USCS § 459 and this Court's holdings in Sacher v. U.S., Wood v. Georgia, Ex parte Hudgings, In re Michael, Brown v. U.S., U.S. v. Hudson, Michaelson v. U.S. ex rel. Chicago, St. P., M. & O. Ry. Co., Penfield Co. of Cal. v. Securities and Exchange Commission, Fisher v. Pace, Cammer v. U.S., In re McConnell, Harris v. U.S., Oriel v. Russell, Adelberg v. Cunningham, Jacobs v. Cunningham, In re Greenberg, Green v. U.S., and Chambers v. NASCO, Inc. apply in the instant Case

that warrant reversal of the Superior Court's order of July 14, 1993? (Ref: Appendix, pp. 6, 30-36, 58-61, 77-81, 127-140, 144, 166-172, 194-195, & 215-217).

5. Do the provisions of Amendment IV, § 1 and Amendment XIV, § 1 of the United States Constitution and, this Court's holdings in Bumper v. State of N.C., Whiteley v. Warden, Wyo. State Penitentiary, Gouled v. U.S., Marron v. U.S., Go-Bart Importing Co. v. U.S., Grau v. U.S., and Maness v. Meyers apply in the instant Case that warrant vacation of the Superior Court's stay order of October 25, 1993? (Ref: Appendix, pp. 8, 36-37, 61, 140-142, 144, & 172-174).

6. Is Petitioner entitled to an award of costs pursuant to Rule 43 of the Supreme Court of the United States? (Ref: Appendix, pp. 37-38, 61, 86, 145, & 175).

LIST OF PARTIES

1. Petitioner

Vathsala Srinivasan
1401 E. Santo Antonio Drive, #140
P.O. Box 430
Colton, CA 92324
Tel: (909) 824-3332

2. Respondent

Superior Court of the State of California
Los Angeles County, Southeast District
(Norwalk)

Represented By:

Hon. Daniel Solis Pratt
Department "C"
Los Angeles Superior Court
12720 Norwalk Blvd.
Norwalk, CA 90650
Tel: (310) 807-7245

3. Real Party in Interest

Rio Hondo Community College District

Represented By:

Ric C. Ottaiano, Esq.
LYNBERG & WATKINS
Suite 101
2020 E. First Street
Santa Ana, CA 92705
Tel: (714) 973-1220

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No.: _____

IN THE SUPREME COURT
OF THE
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OCTOBER TERM, 1993

VATHSALA SRINIVASAN,
PETITIONER,

v.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
LOS ANGELES COUNTY, SOUTHEAST DISTRICT (NORWALK),
RESPONDENT

RIO HONDO COMMUNITY COLLEGE DISTRICT,
REAL PARTY IN INTEREST

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA,

SECOND APPELLATE DISTRICT

PETITION FOR WRIT OF CERTIORARI

Petitioner, Vathsala Srinivasan, respectfully prays that a writ of certiorari issue to review the order of the Court of Appeal of the State of California, Second Appellate District, denying Plaintiff's Petition for Writ of Mandate and Prohibition.

OPINIONS BELOW

The order of the Court of Appeal of the State of California denying Petitioner's Petition for Writ of Mandate and Prohibition appears in page 2 of the Appendix to this Petition. The order of the Supreme Court of the State of Calfiornia denying Petitioner's Petition for Review appears in page 1 of the Appendix to this petition.

JURISDICTION

The order of the Court of Appeal of the State of California in this matter was entered on January 6, 1994. A timely Petition for Review was filed on January 18, 1994 with the Supreme Court of the State of California. The Supreme Court's denial of said Petition was issued on March 17, 1994. This Court's jurisdiction is invoked under Title 28, USCS. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of Amendment IV to the United States Constitution:

"The right of the people to be

secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Section 1 of Amendment XIV to the United States Constitution:

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Rule 60(b) of the Federal Rules of Civil Procedure:

"**Relief from Judgment or Order - Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2)

newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, USCS., § 1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

9 USCS § 10 is set forth in pp. 214-215 of the Appendix to this Petition.

18 USCS § 401 is set forth in pp. 215-216 of the Appendix to this Petition.

28 USCS § 459 is set forth in pp. 216-217 of the Appendix to this Petition.

STATEMENT OF THE CASE

On September 28, 1993, Petitioner filed and served a Motion to Vacate the Arbitration Award and a Motion to Tax Costs against the Defendant in respect of an arbitration award that was made in this action on September 14, 1993. In the said motion, the Petitioner asserted that the defense attorney, Ms. Diana Denman had procured the arbitration award in favor of the defendant through undue means. A hearing was held on the Petitioner's motion on October 13, 1993 in the Superior Court when the motion was denied. In the courts below, Petitioner also asserted that the arbitration award warranted reversal on account of the fact that the arbitrator failed to

find on all issues submitted to arbitration which conduct substantially prejudiced the rights of the Petitioner and that arbitrator exceeded his powers and the award cannot be corrected without affecting the merits of the decision on the controversy submitted.

On October 19, 1992, Petitioner filed and served a motion to quash deposition subpoenas issued by the defense counsel, Ms. Denman for production of business records pertaining to the petitioner, motion for protective order and for award of monetary sanction against the defense counsel. In the said motion, the Petitioner asserted privilege, privacy and relevance as the reasons that warranted the quashing of the said subpoenas that are oppressive and unreasonable. A hearing was held on the said motion on November 13, 1992 when the motion was denied. On November 17, 1992, the Petitioner transmitted a letter via facsimile to the defense counsel, Ms. Denman informing her of the Petitioner's intent to appeal the Respondent's order of November 13, 1992 and

advising Ms. Denman to cease all efforts to obtain any of the records in her subpoenas till such time that the said appeal was decided by the court. Petitioner had time until January 12, 1993 to file the said appeal. However, Ms. Denman had illegally obtained the information that she was seeking even before Petitioner's motion for reconsideration of the Respondent's prior order of November 13, 1992 was heard. The said motion was subsequently denied by the Respondent on January 8, 1993. The Minute Orders made by the Superior Court on November 13, 1992 and on January 8, 1994 were devoid of any findings of fact and conclusions of law.

On April 28, 1993, the Petitioner served a deposition subpoena for production of business records on the Real Party in Interest. Subsequently, the Real Party in Interest served a motion to quash the said subpoena which was heard on May 26, 1993. During the said hearing, the Respondent acknowledged that it understood the nature of the Petitioner's complaint to be a dis-

crimination complaint. And yet, the Respondent denied Petitioner's Request for the production of documents and, the Respondent granted the motion of the Real Party in Interest to quash the Petitioner's deposition subpoena and worse still, the Respondent ordered the Petitioner to pay sanctions in the amount of $750.00 without giving any justification. During the said hearing, the Petitioner asked for the Respondent's rationale for its ruling but the Respondent refused to offer any rationale whatsoever. The Minute Order entered by the Respondent subsequently was once again devoid of findings of fact and conclusions of law.

On June 28, 1993, Petitioner served a motion for contempt proceedings against the defense counsel, Ms. Denman. In the said motion, the Petitioner asserted that civil as well as criminal contempt proceedings were warranted against Ms. Denman in order to protect the rights of the Petitioner and in order to vindicate the dignity or authority of the court. The said

motion was necessitated due to the fact that Ms. Denman engaged in unlawful practice of law and, she committed direct contempt when she engaged in misconduct designed to misuse the adversary system to obtain an unfair advantage. A hearing was held on the said motion on July 14, 1993 when Ms. Denman did not show up for the hearing. The motion was denied by the Respondent. However, Ms. Denman's contemptuous behavior is virulent and is continuing in nature. For instance, after the discovery cutoff date in this action, Ms. Denman issued a deposition subpoena on Pacific Bell Security seeking Petitioner's telephone records. She did this without obtaining court's approval. While this case is being litigated in the Norwalk Superior Court in the County of Los Angeles, Ms. Denman had fraudulently issued the said subpoena in the name of the Santa Ana Superior Court in the County of Orange.

On October 7, 1993, the defense counsel, Ms. Denman served a motion to dismiss the Petitioner's Complaint alleging that the

Petitioner's non-payment of the sanctions of $750.00 each that the Respondent's orders of November 13, 1992 and May 26, 1993 entailed warranted the said dismissal. However, the Respondent did not dismiss the action. Rather, the Respondent stayed all further proceedings in this action pending compliance with the said orders. The said stay order of Respondent was entered on October 25, 1993. In as much as the said stay order is based on two prior orders of the Respondent which are challenged in this petition, Petitioner seeks to have the said stay order vacated upon resolution of other issues that caused the said stay order.

Petitioner raised the federal questions that are sought to be reviewed in this petition in a timely and proper manner in the state courts and, they were passed upon by those courts (Ref: Appendix, pp. 53-62, 106-142, 147-179, 183-192, & 194-212). Thus, this Court has jurisdiction to review the state courts' decisions on a writ of certiorari.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for two reasons: The Supreme Court of the State of California has decided some of the federal questions raised in this petition in a way that conflicts with the decisions of some of the United States Courts of Appeals; the California state courts have decided important questions of federal law in a way that conflicts with applicable decisions of this Court.

In Bonar v. Dean Witter Reynolds, Inc. (11th Cir. 1988) 835 F2d 1378, 1383, fn.8, the court ruled saying that a matter could be reopened for arbitration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure if one of the parties was prevented "from fully and fairly presenting its case or defense". In Metal Products Workers Union v. Torrington Co. (1965, DC Conn) 242 F Supp 813, affd (CA2 Conn) 358 F2d 103, the court discussed the question of "manifest disregard" as an aspect of possible misbehavior of arbitrators (9 USCS § 10(c)), or

exceeding or imperfectly executing their powers (9 USCS § 10(d)). And in San Martine Compania De Navegacion, S.A. v. Saguenay Terminals, Ltd. (1961, CA9 Hawaii) 293 F2d 796, the court suggested that if its suggested definition of "manifest disregard" were applied, namely, that "manifest disregard" of the law is evidenced where arbitrators understand and correctly state the law but proceed to ignore it, the result might well be considered as the use of "undue means" within the meaning of 9 USCS § 10(a), or might amount to "partiality" within the meaning of § 10(b). In U.S. v. Farragut 89 U.S. 406, 22 Wall. 406, 22 L.Ed. 879, this Court ruled saying that where the arbitrators exceed the power conferred by the submission, an award may be set aside, notwithstanding a provision in the agreement to arbitrate that the award shall be final on all questions of law and fact. In Lyle v. Rodgers, 18 U.S. 394, 5 Wheat. 394, 5 L.Ed. 117, Davy's Ex'rs v. Faw, 11 U.S. 171, 7 Cranch 171, 3 L.Ed. 305, and in Carnochan & Mitchel v. Christie, 24

U.S. 446, 11 Wheat. 446, 6 L.Ed. 516, this Court ruled saying that in order that the award of arbitrators shall be valid, it must be an adjudication of all the matters submitted; and an award is void which does not decide all questions submitted. In Williams v. Paschall, 4 U.S. 284, 4 Dall. 284, 1 L.Ed. 835, 3 Yeates 564, this Court held that an award of arbitrators will be set aside for a plain and clear mistake either in law or fact. In Commonwealth Coatings Corp. v. Continental Cas. Co., 89 S.Ct. 337, 393 U.S. 145, 21 L.Ed.2d 301, rehearing denied 89 S.Ct. 848, 393 U.S. 1112, 21 L.Ed.2d 812, this Court held that Section of Untied States Arbitration Act authorizing vacation of award if procured by corruption, fraud or undue means or if partiality by arbitrator was evident shows desire of Congress to provide not merely for any arbitration but for an impartial one. And, in Wilko v. Swan (1953) 346 US 427, 98 L.Ed. 168, 74 S.Ct. 182, this Court intimated that there is a possibility for vacating under § 10 if an award were clearly

shown to be in "manifest disregard" of the law.

In Bumper v. State of N.C., 88 S.Ct. 1788, 391 U.S. 543, 20 L.Ed.2d 797, appeal after remand 169 S.E.2d 65, 5 N.C. App.528, affirmed 170 S.E.2d 457, 275 N.C. 670, this Court held that an unconstitutional search cannot be justified by what it turns up [USCA Const. Amends 4, 14]. In Whiteley v. Warden, Wyo. State Penitentiary, 91 S.Ct. 1031, 401 U.S. 560, 28 L.Ed.2d 306, this Court held that discoveries made during course of illegal search cannot be used to validate the probable cause judgment upon which the legality of the search depends. In Gouled v. U.S., 41 S.Ct. 261, 255 U.S. 298, 65 L.Ed.647, this Court held that the provisions of USCA Const. Amend. 4, protecting against unreasonable searches and seizures, are indispensable to the full enjoyment of personal security, liberty, and private property, and should receive a liberal construction to prevent an encroachment on the rights secured by them. In Marron v. U.S. 48 S.Ct. 74, 275 U.S. 192, 72 L.Ed. 231, motion denied 48 S.Ct. 206, 72

L.Ed. 1016, this Court held that general searches violate fundamental rights and are forbidden by 4th Amend. [USCA Const. Amend. 4]. In Go-Bart Importing Co. v. U.S. 51 S.Ct. 153, 282 U.S. 344, 75 L.Ed. 374, this Court held that constitutional provision against unreasonable searches and seizures protects all [USCA Const. Amend. 4]. And, in Grau v. U.S. 53 S.Ct. 38, 287 U.S. 124, 77 L.Ed. 212, this Court held that guarantees of 4th Amendment must be liberally construed to prevent impairment of protection extended.

In Sacher v. U.S., 72 S.Ct. 451, 343 U.S. 1, 96 L.Ed. 717, rehearing denied 72 S.Ct. 756, 343 U.S. 931, 96 L.Ed. 1341, this Court held that at a trial, the court is so much the judge and the judge so much the court that the contempt of one is the contempt of the other. In Wood v. Georgia, 82 S.Ct. 1364, 370 U.S. 375, 8 L.Ed. 2d 569, this Court held that right of courts to conduct their business in an untrammeled way is fundamental, and courts necessarily must possess means of punishing for contempt when conduct

tends directly to prevent discharge of their functions [USCA Const. Amends. 1, 14]. In Ex parte Hudgings, 39 S.Ct. 337, 249 U.S. 378, 63 L.Ed. 656, 11 A.L.R. 333, this Court held that perjury may be punished as "contempt" when it obstructs court. In re Michael, 66 S.Ct. 78, 326 U.S. 224, 90 L.Ed. 30, this Court held that the mere fact that false swearing is an incident to an obstruction of the administration of justice charged does not immunize the culprit from contempt proceedings [28 USCA § 459; 18 USCA § 401]. In Brown v. U.S., 78 S.Ct. 622, 356 U.S. 148, 2 L.Ed.2d 589, 72 A.L.R. 2d 818, rehearing denied 78 S.Ct. 776, 356 US 948, 9 L.Ed.2d 822, this Court held that perjury is a specifically defined offense, subject to prosecution under all the safeguards of Fifth and Sixth Amendments, and truth or falsity of a witness' testimony should not be left to a judge's unaided determination in midst of trial [USCA Const. Amends. 5,6]. In U.S. v. Hudson, 11 U.S. 32, 7 Cranch 32, 3 L.Ed. 259, and in Michaelson v. U.S. ex rel. Chicago,

St. P., M. & O. Ry. Co., 45 S.Ct. 18, 266 U.S. 42, 69 L.Ed. 162, 35 A.L.R. 451, this Court held that Court has inherent power to punish for contempt. In Penfield Co. of Cal. v. Securities and Exchange Commission, 67 S.Ct. 918, 330 U.S. 585, 91 L.Ed. 1117, this court held that contempt has dual function of vindication of public interest by punishment of contemptuous conduct and of coercion to compel the contemnor to do what the law requires of him. In Fisher v. Pace, 69 S.Ct. 425, 336 U.S. 155, 93 L.Ed. 569, rehearing denied 69 S.Ct. 653, 336 U.S. 928, 93 L.Ed. 1089, this Court held that courts have inherent power to punish contempts in the face of the court without further proof of facts and without aid of jury. In Cammer v. U.S., 76 S.Ct. 456, 350 U.S. 399, 100 L.Ed. 474, this Court held that power to disbar an attorney proceeds upon very different grounds from those which support the court's power to punish for contempt [18USCA § 401(1-3)]. In In re McConnell, 82 S.Ct. 1288, 370 U.S. 230, 8 L.Ed.2d 434, this Court held that contempts are

summary in nature and determination of guilt is in judge rather than in jury. In Harris v. U.S., 86 S.Ct. 352, 382 U.S. 162, 15 L.Ed.2d 240, this Court held that summary contempt procedure was designed to fill the need for immediate penal vindication of dignity of the court. In Oriel v. Russell, 49 S.Ct. 173, 278 U.S. 358, 73 L.Ed. 419, followed in Adelberg v. Cunningham, 32 F2d 1013, Jacobs v. Cunningham, 32 F2d 1016, and in In re Greenberg, 41 F2d 998, this Court held that proof in civil contempt proceeding need not be beyond reasonable doubt. In Green v. U.S., 78 S.Ct. 632, 356 U.S. 165, 2 L.Ed.2d 672, this Court held that in areas where Congress has not seen fit to impose limitations on sentencing power for contempts, district courts have special duty to exercise their extraordinary power with utmost sense of responsibility and circumspection. And, in Chambers v. NASCO, Inc., 111 S.Ct. 2123, 115 L.Ed.2d 27, rehearing denied 112 S.Ct. 12, 115 L.Ed.2d 1097, this Court held that power to punish for contempts, inherent in all courts,

reaches both conduct before court and that beyond court's confines.

In Maness v. Meyers, this Court held that every ruling by the presiding judge need not be accepted in silence since counsel may object to a ruling and thereby alert opposing counsel and the court to an issue so that the former may respond and the latter may be fully advised before ruling.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the order of the Court of Appeal of the State of California in this matter.

28 USCS § 2403(b) may be applicable to this matter and hence, a copy of this petition is being served on the attorney general of the State of California.

DATED: June 15, 1994

Respectfully submitted,

By: V Srinivasan

VATHSALA SRINIVASAN
Petitioner

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Second Appellate District, Division 5,
No: B080910
S037443

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

VATHSALA SRINIVASAN, Petitioner

v.

LOS ANGELES COUNTY SUPERIOR COURT, Respondent

RIO HONDO COMMUNITY COLLEGE DIST.,
Real Party in Interest

Petition for review DENIED

SUPREME COURT
FILED
March 17, 1994

Robert Wandruff Clerk, Deputy

LUCAS, Chief Justice

APPENDIX A

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 5 DATE: 01/06/94

Vathsala Srinivasan
1401 E. Santo Antonio Dr.
#140
Colton, CA 92324

RE: Srinivasan, Vathsala
Vs.
S.C.L.A.
Rio Hondo Community College District
2 Civil B080910
Los Angeles No: VC007518

THE COURT:
The petition for writ of Mandate, Prohibition is Denied

APPENDIX B

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE: NOV. 13, 1992 DEPT. SE-A

HONORABLE JAMES W. EDSON JUDGE C. GOVAN
DEPUTY CLERK

22 F. MAJCHRAK S. MARTINEZ
DEPUTY SHERIFF REPORTER

0830AM VC007518 COUNSEL FOR PLAINTIFF
SRINIVASAN, IN PRO PER
VATHSALA

COUNSEL FOR DEFENDANT
RIO HONDO COM. D. DENMAN
COLLEGE DIST.

NATURE OF PROCEEDINGS.

Motion of Pltf. VATHSALA SRINIVASAN to quash Deft.'s deposition subpoenas for production of business records, for protective order and for award of monetary sanction against Deft.

Motion is denied. The Pltf. is to pay to the moving Deft. the sum of $750 as and for attorney fees within 30 days of notice of ruling

NOTICE TO BE PREPARED:
BY RESPONDENT(S)

MINUTES ENTERED
22 NOV. 13, 1992
CLERK

APPENDIX C

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE: JAN. 08, 1993 DEPT. SE-A

HONORABLE JAMES W. EDSON JUDGE C. GOVAN/ R.A. ABRAMS DEPUTY CLERK

19 F. MAJCHRAK DEPUTY SHERIFF S. MARTINEZ REPORTER

0830AM VC007518

SRINIVASAN, VATHSALA

RIO HONDO COM. COLLEGE DIST.

COUNSEL FOR PLAINTIFF IN PRO PER

COUNSEL FOR DEFENDANT E. THEISEN

NATURE OF PROCEEDINGS.

Motion of Pltf. VATHSALA SRINIVASAN for reconsideration of Pltf.'s motion to quash Deft's deposition subpoenas for production of business records, for protective order and for award of monetary sanction against Deft.
MOTION: DENIED
NOTICE TO BE PREPARED: BY RESPONDENT(S)

19

MINUTES ENTERED JAN. 08, 1993 CLERK

APPENDIX D

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE: 5/26/93 DEPT. SE-C

HONORABLE DANIEL S. PRATT JUDGE R.A. ABRAMS
DEPUTY CLERK

13 D. CHANDLER
DEPUTY SHERIFF
B. GEORGE
REPORTER

0830AM VCOO7518
V. SRINIVASAN,
vs.
RIO HONDO COM.
COLLEGE DIST.

COUNSEL FOR PLAINTIFF
IN PRO PER
COUNSEL FOR DEFENDANT
D. DENMAN

NATURE OF PROCEEDINGS.

Motion of Deft. Rio Hondo Com. Col. Dist. to quash deposition subpena for production of business records; Request for monetary sanctions in the form of atty's fees;	Motion to quash is granted. Sanctions awarded in the amount of $750.00 against Pltf. and for Deft. Rio Hondo Com. Col. to be paid within 30 days of notice of ruling
Motion of Deft. for terminating sanctions or, inthe alternative, issue or evidence sanctions for failure to comply with previous court order;	Motion for terminating sanctions is denied.

NOTICE
13 TO BE
PREPARED: BY MOVING PARTY

MINUTES ENTERED
5/26/93
CLERK

APPENDIX E

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE: 7/14/93 DEPT. SE-C

HONORABLE DANIEL S. PRATT JUDGE R.A. ABRAMS DEPUTY CLERK

4 D CHANDLER DEPUTY SHERIFF H. BAUGH REPORTER

0830AM VCO07518
V. SRINIVASAN,
vs.
RIO HONDO COM. COLLEGE DIST.

COUNSEL FOR PLAINTIFF IN PRO PER
COUNSEL FOR DEFENDANT P. LANGFORD

NATURE OF PROCEEDINGS.

Ntc. of Mtn. for pltfs., VATHSALA SRINIVASAN for contempt proceedings against the Deft. and the Defense counsel.	Motion for contempt proceedings is denied.
Ntc. of Mtn. for Pltf., 1) To compel Deft. to attend deposition., 2) To compel Deft. to produce documents requested by Pltfs. 3) For award of monetary sanctions against the deft.	Motion to compel deposition is granted. Motion to compel documents is denied pursuant to CCP 2031(1). Sanctions denied.

NOTICE TO BE PREPARED: BY MOVING PARTY

4

MINUTES ENTERED 07/14/93 CLERK

APPENDIX F

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE: 10/13/93 DEPT. SE-C

HONORABLE DANIEL S. PRATT JUDGE R.A. ABRAMS
DEPUTY CLERK

8 D. CHANDLER H. BAUGH
DEPUTY SHERIFF REPORTER

0830AM VC007518
V. SRINIVASAN,
vs.
RIO HONDO COM.
COLLEGE DIST.

NATURE OF PROCEEDINGS.

Pltf. Vathsala Srinivasan Ntc. of Mtn. and Mtn. to vacate the arbitration award. Mtn. to tax costs against the Deft.

Deny MP has failed to demonstrate either that the 1) arbitration was procured by corruption or fraud; or 2) that her rights were prejudiced by any delay in scheduling the arb. hearing.

MINUTES ENTERED
8 10/13/93
CLERK

APPENDIX G

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

DATE: 10/25/93 DEPT. SE-C

HONORABLE DANIEL S. PRATT JUDGE R.A.ABRAMS DEPUTY CLERK

2 D. CHANDLER DEPUTY SHERIFF H. BAUGH REPORTER

0830AM VC007518
SRINIVASAN,
vs.
RIO HONDO COM.
COLLEGE DIST.

NATURE OF PROCEEDINGS.

Deft., Rio Hondo Com. College Dist., Ntc. of Mtn. and Mtn. to dismiss. RULING: Pursuant to CCP 2023 (b)(4)(B), this court orders this matter stayed until π/OP fully complied w/ the discovery sanction orders dated 11/13/92 & 5/26/93 both of which required π/OP to pay Δ/MP $750.00 on each occasion.

MP's motion to dismiss pursuant to CCP 583.150 is denied. Motion currently set for 10-27-93 is O/C & stayed.

NOTICE: BY RESPONDENT(S) MINUTES ENTERED
2 10/25/93
CLERK

APPENDIX H

CIVIL NO.: S037443

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

VATHSALA SRINIVASAN, Plaintiff and Appellant,	Court of Appeal Docket No.: **B080910**
vs.	Superior Court Case No.: **VC007518**
RIO HONDO COMMUNITY COLLEGE DISTRICT, Defendant and Respondent	**CIVIL NO.: S037443**

PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-RESPONDENT'S ANSWER (CRC Rule 28)

On Appeal From the Order of the Court of Appeal of the State of California Second Appellate District

Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Post Office Box 430
Colton, California 92324

Telephone: (909) 824-3332

Appellant, in pro per

APPENDIX I

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Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Post Office Box 430
Colton, California 92324

Telephone: (909) 824-3332

Plaintiff-Appellant, in pro per

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

VATHSALA SRINIVASAN, Plaintiff-Appellant,	)	
vs.	)	
RIO HONDO COMMUNITY COLLEGE DISTRICT, Defendant-Respondent	)	**CIVIL NO.: S037443**

PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-RESPONDENT'S ANSWER

To the Honorable Chief Justice Malcom M. Lucas, and to the Honorable Associate Justices of the Supreme Court of the State of California:

COMES NOW Plaintiff-Appellant, Vathsala Srinivasan, and submits the following Reply to

the Defendant-Respondent's Answer to the Petition for Review in the above-captioned Case:

ISSUE NO. 1: In her Petition for Review, the Plaintiff had asserted that this issue was presented to the Court of Appeal in a timely fashion (Ref: Appendix, pp. 68-69). Defendant does not dispute the fact that the Clerk of the Superior Court of the State of California in Norwalk did not ever mail any notice of entry of judgment whatsoever to the Plaintiff in respect of any of the appealable orders of the Court. Under the circumstances, the timeliness of the Plaintiff's Petition for Writ of Mandate and Prohibition that was filed within the Court of Appeal is guaranteed by the California Code of Civil Procedure, §664. Further, Plaintiff has articulated reasons why this Court must review this Case in order to secure uniformity of decision or the settlement of important questions of law as regards the timeliness issue (Ref: Appendix, pp. 70-72).

Although in light of the aforementioned reasons the Plaintiff is not required to show any extra-ordinary circumstances or good cause to justify the **alleged** late filing of her Petition for Writ of Mandate and Prohibition, the Plaintiff has nevertheless discharged this **alleged requirement** in her Petition filed with this Court. (Ref: Appendix, pp. 72-75). Further, in support of its claim of alleged untimeliness of Plaintiff's Petition for Writ of Mandate and Prohibition, the defendant falls back on the Case law: Popelka, Allard, McGowan & Jones v. Superior Court, (1980) 107 Cal.App.3d 496, 499. Whereas, Plaintiff's assertion of timeliness of the same Writ is based on CCP §664. Thus, the Plaintiff's assertion is more persuasive than the Defendant's allegation in this regard for, a case law cannot take precedence over a statute.

* Besides, the Plaintiff has offered all of the following reasons in justification of her Petition to get the arbitration award in this Case vacated: i) Arbitrator is disqualified by

delay in holding the Hearing and the delay has caused substantial prejudice to the Plaintiff; ii) The arbitration award was procured through undue means by the defense counsel, Ms. Diana Denman; iii) The Superior Court abused its discretion in denying the Plaintiff's Motion to Vacate the arbitration award; iv) Arbitrator failed to find on all issues submitted which conduct substantially prejudiced the rights of the Plaintiff; and v) Arbitrator exceeded his powers and the award cannot be corrected without affecting the merits of the decision on the controversy submitted; . . . Yet, the defendant had attempted to address only the first one of the **5** said reasons. Thus, the defendant has not disputed the factual contentions raised by the Plaintiff in the remaining **4** reasons as mentioned above. As a matter of fact, vacation of the arbitration award is warranted even if **any one** of the aforementioned reasons holds. Thus, once again, the Plaintiff has presented persuasive argument in support of her Petition to get the arbitration

award vacated. Further, by way of discharging the requirements of California Rules of Court, Rule 29(a)(1) so as to request this Court to review this Case in order to secure uniformity of decisional law in the State of California or to settle important questions of law, Plaintiff presents the following examples for each of the reasons as stated above.

Reason i): Cathcart v. Security Title Ins. etc. Co. (1944) 66 Cal. App. 2d 469, 474, 475, 152 P.2d 336;

Reason ii): Pacific Crown Distributors v. Brotherhood of Teamsters (1986) 183 Cal.App.3d 1138, 1146-1147, 228 Cal.Rptr. 645; Stockwell v. Equitable Fire & Marine Ins. Co. of Providence, R.I. (1933) 25 P.2d 873, 134 C.A. 534.

Reason iii): State Farm etc. Ins. Co. v. Superior Court, 47 Cal.2d 428, 432 (304 P.2d 13); Hays v. Superior Court, 16 Cal.2d 260, 265 (105 P.2d 975); Gromeeko v. Superior Court, 114 Cal. App. 2d 754, 757 (251 P.2d 29).

Reason iv): East San Bernardino County Water

Dist. v. City of San Bernardino (1973) 33 Cal.App.3d 942, 953-954, 109 Cal.Rptr. 510; Jones v. Kvistad (1971) 19 Cal.App.3d 836, 841, 97 Cal.Rptr. 100; Banks v. Milwaukee Ins. Co. (1966) 247 Cal.App.2d 34, 38-40, 55 Cal.Rptr. 139 Thorup v. Dean Witter Reynolds, Inc. (1986) 180 Cal.App.3d 228, 237, 225 Cal.Rptr. 52; Grunwald-Marx, Inc. v. L.A. Joint Board (1959) 52 Cal.2d 568, 590, 343 P.2d 23; Ulene v. Murray Millman of California, 175 Cal.App.2d 655, 661 (346 P.2d 494); M.B. Zaninovich, Inc. v. Teamster Farmworker Local Union 946 (1978) 86 Cal.App.3d 410, 416, 150 Cal.Rptr. 233; Lovret v. Seyfarth (1972) 101 Cal.Rptr. 143, 22 C.A. 3d 841; A.D. Hoppe Co. v. Fred Katz Const. Co. (1967) 57 Cal. Rptr. 95, 249 C.A. 2d 154, 25 A.L.R. 3d 1162; Boyd v. Bargagliotti (1909) 107 P. 150, 12 C.A. 228.

Reason v): San Luis Obispo Bay Properties, Inc. v. Pacific Gas & Electric Co. (1972) 28 Cal.App.3d 556, 564, 104 Cal.Rptr. 733; Loving & Evans v. Blick (1949) 33 Cal.2d 603, 607, 609-

610, 204 P.2d 23; All Points Traders, Inc. v. Barrington Associates (1989) 211 Cal.App.3d 723, 736-738, 259 Cal.Rptr. 780; National Football League Players' Assn. v. National Football League Management Council (1986) 188 Cal. App.3d 192, 199, 233 Cal.Rptr. 147; Schneider v. Kaiser Foundation Hospitals (1989) 215 Cal.App. 3d 1311, 1317, 264 Cal. Rptr. 227; Government Emp. Ins. Co. v. Brunner (1961) 12 Cal.Rptr. 547, 191 C.A. 2d 334; Abbott v. California State Auto Assn. (1977) 68 Cal.App.3d 763, 770-771, 137 Cal.Rptr. 580.

* Defendant has not offered any legal authority in support of its contention that the Plaintiff's Request for Trial de Novo renders moot all questions raised by the Plaintiff with regard to the arbitration award. As a matter of fact,

"if matters ordered arbitrated fall clearly outside the scope of arbitration and the **arbitration process is unduly time consuming or expensive,** relief may be sought by writ of prohibition, prohibiting the court from enforcing its order denying vacation of arbitration award, and by writ of mandate, compelling the trial court to set aside its order denying vacation of arbitration award, and compelling the trial court to exercise its

jurisdiction to hear and decide a pending civil action involving the non-arbitrable dispute"

[Lesser Towers, Inc. v. Roscoe-Ajax Constr. Co. (1969) 271 Cal.App.2d 675, 692-693, 77 Cal.Rptr. 100 (dictum); Cook v. Superior Court (1966) 240 Cal.App.2d 880, 884, 50 Cal. Rptr. 81; Bertero v. Superior Court (1963) 216 Cal.app.2d 213, 222, 30 Cal. Rptr. 719 (peremptory writ of mandate issued); Weiman v. Superior Court (1959) 51 Cal.2d 710, 711-715, 336 P.2d 489]. Further,

"a court of appeal will exercise its original jurisdiction in the first instance to issue a writ of mandate, in order to resolve issues of great public import whose prompt resolution is necessary"

[Aden v. Younger (1976) 57 Cal.App.3d 662, 670, 129 Cal. Rptr. 535]. As a matter of fact, in the CNA Casualty of California v. Seaboard Surety Co. (1986) 176 Cal.App.3d 598, 618 [222 Cal.Rptr. 276] Case, the Court went so far as to rule saying that

"an appellate court can consider an issue **even if** the said issue was not properly raised in the trial court if **the issue presents a pure question of law on undisputed evidence regarding either a noncurable defect of substance, such as lack of jurisdiction . . . or a matter affecting the pub-**

lic interest or the due administration of justice. In such a case, the failure to raise a point below will not constitute waiver"

[Heldt v. Municipal Court (1985) 163 Cal.App.3d 532, 537, fn. 6 (209 Cal. Rptr. 579)].

ISSUE NO. 2: In her Petition for Review, the Plaintiff had asserted that her Petition for Writ of Mandate and Prohibition that was filed with the Court of Appeal on January 3, 1994 was timely in respect of all of the orders of the Superior Court that are challenged in the said Petition for Writ (Ref: Appendix, pp. 68-70). Further, Plaintiff has articulated reasons why this Court must review this Case in order to secure uniformity of decision or the settlement of important questions of law as regards the timeliness issue (Ref: Appendix, pp. 70-72).

* By way of discharging the requirements of California Rules of Court, Rule 29(a)(1) so as to request this Court to review this Case in order to secure uniformity of decisional law in the

State of California or to settle important questions of law, plaintiff has cited conflicting appellate decisions in her Petition for Review filed with this Court. (Ref: Apendix, pp. 76,84). In addition, Plaintiff offers the following examples to discharge the said requirement: Thomas B. v. Superior Court (1985) 175 Cal.App.3d 255, 260, 220 Cal.Rptr. 577; Hofmann Corp. v. Superior Court (1985) 172 Cal.app.3d 357, 362-363 fn. 2, 218 Cal.Rptr. 355; Willis v. Superior Court (1980) 112 Cal.App.3d 277, 289, 169 Cal.Rptr. 301; Burke v. Superior Court (1969) 71 Cal. 2d 276, 277-278 fn. 1, 78 Cal. Rptr. 481, 455 P.2d 409; Petterson v. Superior Court (1974) 39 Cal.App.3d 267, 269, 114 Cal. Rptr. 20; Mihans v. Municipal Court (1970) 7 Cal.App.3d 479, 483, 87 Cal.Rptr. 17; DiGiorgio Fruit Corp. v. Dept. of Employment (1961) 56 Cal.2d 54, 58-59, 13 Cal.Rptr. 663, 362 P.2d 487; Heavy, Highway Bldg. Constr. Teamsters Committee v. Superior Court (1962) 203 Cal.App.2d 591, 597, 21 Cal.Rptr. 840.

ISSUE NO. 3: To rebut Defendant's allegation regarding the "timeliness" issue, plaintiff incorporates by reference her prior assertions in this Reply (Ref: Appendix, p. 27).

* By way of discharging the requirements of California Rules of Court, Rule 29(a)(1) so as to request this Court to review this Case in order to secure uniformity of decisional law in the State of California or to settle important questions of law, Plaintiff has cited conflicting appellate decisions in her Petition for Review filed with this Court (Ref: Appendix, p. 76, 81-84). In addition, Plaintiff offers the following examples to discharge the said requirement: California Trial Lawyers Assn. v. Superior Court (1986) 187 Cal.App.3d 575, 578-579, 231 Cal.Rptr. 725; San Joaquin County Employees Assn. v. City of Stockton (1984) 161 Cal.app.3d 813, 820, 207 Cal. Rptr. 876; Lyle v. Superior Court (1981) 122 Cal. App.3d 470, 479, 175 Cal.Rptr. 918; Vasquez

v. Superior Court (1971) 4 Cal.3d 800, 806-807, 94 Cal.Rptr. 796, 484 P.2d 964.

ISSUE NO. 4:To rebut Defendant's allegation regarding the "timeliness" issue, Plaintiff incorporates by reference her prior assertions in this Reply (Ref: Appendix, pp. 20-21).

* By way of discharging the requirements of California Rules of Court, Rule 29(a)(1) so as to request this Court to review this Case in order to secure uniformity of decisional law in the State of California or to settle important questions of law, Plaintiff has cited conflicting appellate decisions in her Petition for Review filed with this Court. (Ref: Appendix, pp. 76, 81-84). In addition, Plaintiff offers the following examples to discharge the said requirement: Coriell v. Superior Court (1974) 39 Cal.App.3d 487, 491 fn. 1, 114 Cal.Rptr. 310; Associated Brewers Distrib. Co. v. Superior Court (1967) 65 Cal.2d 583, 589, 55 Cal.Rptr. 772, 422 P.2d 332; Hurtado v. Superior Court (1974) 11 Cal.3d 574,

579, 114 Cal.Rptr. 106, 522 P.2d 666; Babb v. Superior Court (1971) 3 Cal. 3d 841, 851, 92 Cal.Rptr. 179, 479 P.2d 379.

ISSUE NO. 5: Defendant acknowledges that "judgments and orders of contempt are reviewable by extraordinary writ."

*** In light of the provision that the right to relief in a mandate proceeding is determined by facts existing at the time that the Petition is filed"**

[King v. Martin (1971) 21 Cal.App.3d 791, 795, 98 Cal.Rptr. 711; Palmer v. Fox (1953) 118 Cal.App.2d 453, 456, 258 P.2d 30], and, **in light of the provision that**

"a reviewing court that entertains an original proceeding for writ of mandate should properly consider all relevant evidence, including facts not existing until after petition for writ was filed"

[Cooke v. Superior Court (1989) 213 Cal.App.3d 401, 407, 261 Cal. Rptr. 706], Defendant's allegation of "late filing" of the Writ of Mandate by the Plaintiff falls flat on its face.

* Defendant's very understanding of the concept **"Collateral Order Exception to the Final Judgment**

Rule" is incorrect.

* Plaintiff offers all of the following examples in support of her contention that this Court can review the Superior Court's order denying Plaintiff's Motion for Contempt Proceedings against the defense counsel, Ms. Diana Denman: In re Morris (1924) 194 Cal. 63, 67, 227 P. 914; Hicks v. Feiock (1988) 485 U.S. 624, 633, 108 S.Ct. 1423, 99 L.Ed.2d 721; In re Feiock (1989) 215 Cal.App.3d 141, 144-145, 263 Cal.Rptr. 437; In re Karpf (1970) 10 Cal.App.3d 355, 363, 88 Cal.Rptr. 895; Reifler v. Superior Court (1974) 39 Cal.App.3d 479, 485, 114 Cal. Rptr. 356; Weisenburg v. Molina (1976) 58 Cal.App.3d 478, 489, 129 Cal.Rptr. 813; Pimentel v. Houk (1951) 101 Cal.App.2d 884, 887, 226 P.2d 739; Bridges v. Superior Court (1939) 14 Cal.2d 464, 477, 94 P.2d 983; In re Morelli (1970) 11 Cal.App.3d 819, 850, 91 Cal.Rptr. 72; Vanderstock v. Bank of America (1972) 29 Cal. App.3d 731, 734, 105 Cal. Rptr. 699; Taylor v. Superior Court (1942) 20 Cal.2d 244, 246, 125 P.2d 1. Further, in her Petition

-or Review filed with this Court, Plaintiff has offered additional authorities in support of the said contention (Ref: Appendix, pp. 77-82).

* Plaintiff certainly has a bonafide interest and standing in the outcome of an extraordinary proceeding regarding the denial of her motion for contempt proceedings against the defense counsel, Ms. Diana Denman. As an attorney, Ms. Denman

"has a duty to maintain the respect due to the courts of justice and judicial officers and to counsel or maintain such actions, proceedings or defenses only as appear to her legal or just and to employ, for the purpose of maintaining the causes confided to her such means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law"

[Business and Professions Code, § 6068]. The oath of office taken by Ms. Diana Denman when she was admitted to practice included an oath

"to support the laws of the state and to maintain the respect due to the courts of justice"

[Business and Professions Code, §6068(a),(b)]. The facts before this Court clearly show that Ms. Denman has failed to abide by this oath. It is

well established that a court has inherent power to punish for contempt of court. This inherent power

"is a necessary incident to the execution of the powers conferred upon the court, and is necessary to maintain its dignity, if not its very existence"

[In re Shortridge (1893), 99 Cal. 526, 532, 34 P. 227].

"However willing a judge may be to forego the private injury caused to him, the obligation is upon him by his oath to maintain the respect due to the court over which he presides"

[In re Ciraolo, 70 Cal.2d at pp. 394-395]. The condemnation of Ms. Diana Denman's conduct and the potentially grave consequences of a contempt proceedings against a member of the bar should serve as adequate deterrents to other lawyers who may be disposed to similar misbehavior. The courts cannot dispense with the standards of civility to which American lawyers and litigants customarily adhere in criminal as well as civil actions. It is precisely to preserve the opportunity for the fair and dispassionate resolution of strenuously contested disputes by an impartial

tribunal that rules governing the behavior of all the actors in an action exist. Trials which proceed in accordance with the law, the rules of evidence and the standards of demeanor not only reaffirm the integrity and viability of the judicial process, but also serve to insure the ability of each one of us to protect the rights and liberties we enjoy as citizens.

* "An attorney has a duty to deal fairly and objectively with opposing parties, **whether or not the parties are represented by counsel.** Any agreement reached as a result of such dealing will be strictly scrutinized to prevent **overreaching**"

[Davidson v. Davidson, 90 Cal.App.2d 809, 204 P.2d 71 (1949)].

* A judge should take or initiate appropriate disciplinary measures against a lawyer for unprofessional conduct of which the judge may become aware.

* "A member of the State Bar shall not bring a legal action, conduct a defense, or assert a position in litigation, or otherwise take steps, solely for the purpose of harassing or maliciously injuring any person or to prosecute or defend a case solely out of spite"

[Rules of Professional Conduct, Rule 2-110].

"Obedience to law exemplifies respect for law. To lawyers especially, respect for the law should be more than a platitude"

[Ethical Considerations, 1-5].

"The duty of a lawyer to represent his/her client with zeal does not militate against his/her concurrent obligation to treat with consideration all persons involved in the legal process and to avoid the infliction of needless harm"

[Ethical Consideration, 7-10].

"The duty of a lawyer to his/her client and his/her duty to the legal system are the same: to represent his/her client zealously within the bounds of law"

(Ethical Consideration, 7-19].

ISSUE NO. 6: To rebut Defendant's allegation regarding the "timeliness" issue, Plaintiff incorporates by reference her prior assertions in this Reply (Ref: Appendix, pp. 20-21).

* Plaintiff has cited authorities in this reply for the proposition that the Superior Court's order of November 13, 1992 was voidable (Ref: Appendix, pp. 27-28).

* In this reply Plaintiff has cited authorities for the proposition that the Superior Court's order of May 26, 1993 was voidable (Ref:

Appendix, pp. 29-30).

* By way of discharging the requirements of California Rules of Court, Rule 29(a)(1) so as to request this Court to review this Case in order to secure uniformity of decisional law in the State of California or to settle important questions of law, Plaintiff has cited conflicting appellate decisions in her Petition for Review filed with this Court (Ref: Appendix, pp. 76, 81-84). In addition, Plaintiff offers the following examples to discharge the said requirement: Greene v. Superior Court (1961) 55 Cal.2d 403, 406, 10 Cal.Rptr. 817, 359 P. 2d 249; Thompson v. Superior Court (1962) 206 Cal.App.2d 702, 710-711, 23 Cal. Rptr. 841; Babb v. Superior Court (1971) 3 Cal.3d 841, 851, 92 Cal.Rptr. 179, 479 P.2d 379; Bailey v. Fosca Oil Co., Ltd. (1962) 211 Cal.App.2d 307, 308, 27 Cal.Rptr. 454.

ISSUE NO. 7: Defendant does not dispute this issue at all.

* By way of discharging the requirements of California Rules of Court, Rule 29(a)(1) so as to request this Court to review this Case in order to secure uniformity of decisional law in the State of California or to settle important questions of law, Plaintiff offers the following example to discharge the said requirement: Oksner v. Superior Court (1964) 229 Cal.app.2d 672, 690-691, 40 Cal.Rptr. 621.

FURTHER LEGAL ARGUMENT

* Defendant has not raised any additional issues for review by the Supreme Court [California Rules of Court, Rule 28(e)(5)]. Further, throughout its Answer, the Defendant has raised only legal issues and it has not raised any factual disputes whatsoever. As such, this is a proper Case for issuance of a peremptory writ in the first instance [Code of Civil Procedure, §1088; Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal.3d 171, 177-180 (203 Cal.Rptr. 626, 681 P.2d 893)]. The case having been fully briefed, issuance of an alternative writ would add nothing

to the exposition of the issues.

* Plaintiff has complied with the page limit of 15 pages for this typewritten Reply Brief [California Rules of Court, Rule 28(e)(6)].

CONCLUSION

* In summary, it is clear that there are no factual disputes in this Petition and, the Plaintiff has successfully replied all the legal issues raised by the Defendant in its Answer. Accordingly, Plaintiff-Appellant Vathsala Srinivasan respectfully requests that this Court grant her Petition for Review and issue a peremptory writ.

DATED: March 13, 1994 Submitted By:

VSrinivasan

VATHSALA SRINIVASAN

VERIFICATION

I, Vathsala Srinivasan, am the Plaintiff-Appellant in the above-entitled proceeding. I have read the foregoing Reply to Defendant-Respondent's Answer and know the contents thereof. The same is true of my own knowledge, except

as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: March 13, 1994
PLACE: Colton, California

V Srinivasan
VATHSALA SRINIVASAN

PROOF OF SERVICE BY MAIL
(CCP §§ 1013(a), 2015.5)

I, the undersigned, hereby declare under penalty of perjury as follows:

I am a citizen of the United States, and over the age of eighteen years, and am a party to the

within action; my address is 1401 East Santo Antonio Drive, #140, Colton, California 92324.

On this date, I served the interested parties in this action the within document:

PLAINTIFF-APPELLANT'S REPLY TO DEFENDANT-RESPONDENT'S ANSWER (CRC Rule 28)

by placing the document enclosed in a sealed envelope, postage prepaid, in the United States Mail at Colton, California, addressed as follows:

Hon. Malcom M. Lucas Chief Justice Supreme Court of the State of California 303 Second Street 8th Floor San Francisco, CA 94107	(an original & 13 copies) Via Express Mail,Article No.: GB599061023US; & 1 copy via facsimile transmission to: (415) 904-9465

Clerk of the Court Court of Appeal State of California 2nd Appellate District. 300 S. Spring Street Room 2217 Los Angeles, CA 90013	(1 copy) Via Certified Mail, Article No.: p 032 050 043
Hon. Daniel Solis Pratt Department "C" Los Angeles Superior Court 12720 Norwalk Blvd. Norwalk, CA 90650	(1 copy) Via Certified Mail, Article No.: P 032 050 042

Ric C. Ottaiano, Esq.
LYNBERG & WATKINS
Suite 101
2020 E. First Street
Santa Ana, CA 92705

(1 copy)
Via Certified Mail,
Article No:P032050044

Executed at Colton, California on March 14, 1994.

V Srinivasan

Vathsala Srinivasan

CIVIL NO. S037443

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

VATHSALA SRINIVASAN, Plaintiff and Appellant,	)	Court of Appeal Docket No.: **B080910**
vs.	)	Superior Court Case No.: **VC007518**
RIO HONDO COMMUNITY COLLEGE DISTRICT, Defendant and Respondent	)	**CIVIL NO.:**

PETITION FOR REVIEW (CRC Rule 28)

On Appeal From the Order of the Court of Appeal
of the State of California
Second Appellate District

Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Post Office Box 430
Colton, California 92324

Telephone: (909) 824-3332

Appellant, in pro per

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Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Post Office Box 430
Colton, California 92324

Telephone: (909) 824-3332

Appellant, in pro per

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

VATHSALA SRINIVASAN,	)	
Plaintiff-Appellant,	)	
	)	
vs.	)	
	)	
RIO HONDO COMMUNITY	)	
COLLEGE DISTRICT,	)	**CIVIL NO.:**
Defendant-Respondent	)	
	)	

PETITION FOR REVIEW

On Appeal From the Order of the Court of Appeal of the State of California Second Appellate District

To the Honorable Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the State of California:

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Was the Superior Court right in denying Plaintiff's Motion to Vacate the Arbitration Award and Motion to Tax Costs Against the Defendant on 10/13/93 despite the Plaintiff's evidence of the following:

A. Arbitrator is disqualified by delay in holding the Hearing and the delay has caused substantial prejudice to the Plaintiff; and

B. The arbitration award was procured through undue means by the defense counsel, Ms. Diana Denman; and

C. The Superior Court abused its discretion in denying Plaintiff's Motion to Vacate the Arbitration award; and

D. Arbitrator failed to find on all issues submitted which conduct substantially prejudiced the rights of the Plaintiff; and

E. Arbitrator exceeded his powers and the award cannot be corrected without affecting the merits of the decision on the controversy submitted; and

F. Sanctions pursuant to Penal Code §95 and California Code of Civil Procedure §128.5 are warranted against the defense counsel, Ms. Diana Denman?

2. Was the Superior Court right in awarding sanctions against the Plaintiff and in denying Plaintiff's original motion on 11/13/92 and subsequent motion for reconsideration on 01/08/93 to quash Defendant's deposition subpoenas for production of Business Records, For Protective Order and For award of monetary sanction against the Defendant despite the Plaintiff's evidence of the following:

A. The Superior Court made and entered Minute Orders without findings of fact and conclusions of law; and

B. The Superior Court's action granting discovery was in excess of its jurisdiction and an abuse of discretion in that it was a violation of privilege or of the provisions of California Constitution, Article I, §13;

and

C. The defense counsel, Ms. Diana Denman is in contempt of court on account of her unlawful practice of law and on account of her engagement in misconduct designed to misuse the adversary system to obtain an unfair advantage; and

D. The question involved is not moot and it is one of continuing importance to the Plaintiff and the Plaintiff is still interested in the legal issue involved; and

E. The information sought by the Defendant in its subpoenas cannot, as a reasonable possibility, lead to the discovery of admissible evidence or be helpful in preparing for trial since none of the items of information that were sought by the Defendant in its subpoenas were at issue in this action?

3. Was the Superior Court right in awarding sanctions against he Plaintiff and in granting Defendant's motion to quash the Plaintiff's Deposition Subpoena for produc-

tion of Business Records by the Defendant on 5/26/93 despite the Plaintiff's evidence of the following:

A. The Superior Court made and entered a Minute Order on 5/26/93 without findings of fact and conclusions of law; and

B. There exists no rational basis in record that supports the Superior Court's order; and

C. Sanctions pursuant to California Code of Civil Procedure §128.5 are warranted against the Defendant for filing a frivolous motion aimed at causing delay; and

D. Discovery on a party to an action via Deposition Subpoena for Production of Documents is proper; and

E. Some of the documents requested in the Plaintiff's Deposition Subpoena are manifestly relevant to the Plaintiff's Original Complaint in this action while the remaining Documents requested in the said Deposition Subpoena are necessitated due to the fact

that the Defendant had obtained those categories of documents pertaining to the Plaintiff from all of Plaintiff's former employers and, in an Employment Discrimination Complaint such as that of the Plaintiff, the Superior Court should allow production of those documents; and

F. There is no substantial basis for the manner in which the trial court discretion was exercised; and

G. The Superior Court had clearly exceeded the bounds of reason considering all the circumstances before it and it had acted arbitrarily, capriciously and without due regard for the Plaintiff's rights and its action is prejudicial to the Plaintiff?

4. Was the Superior Court right in denying Plaintiff's Motion to Compel Defendant to Produce Documents requested by the Plaintiff and in denying Plaintiff's Request for award of monetary sanctions against the Defendant on 7/14/93 despite the Plaintiff's evidence of the following:

A. There is no substantial basis for the manner in which the trial court discretion was exercised and the trial court applied a patently improper standard of decision; and

B. Sanctions pursuant to California Code of Civil Procedure §§2023(b)(1), 2025(d)(4), 2025(h)(1), 2025(j)(3) and 2025(o) are warranted against the Defendant; and

C. Plaintiff has shown a compelling need for particular documents in the files and, the said documents could not be obtained through other sources; and

D. The Superior Court had ordered outright denial of discovery rather than imposing partial limitations on discovery, if appropriate?

5. Was the Superior Court right in denying Plaintiff's Motion for Contempt Proceedings against the defense counsel, Ms. Diana Denman on 07/14/93 despite the Plaintiff's evidence of the following:

A. Civil as well as Criminal Contempt

Proceedings are warranted against Ms. Diana Denman in order to protect the rights of the Plaintiff and in order to vindicate the dignity or authority of the court; and

B. Ms. Denman engaged in unlawful practice of law and she committed direct contempt when she engaged in misconduct designed to misuse the adversary system to obtain an unfair advantage; and

C. In its opposition to the Plaintiff's Motion for Contempt Proceedings against Ms. Diana Denman, the Defendant did not at all address the specific allegations of the Plaintiff that gave rise to the said motion; and

D. The Superior Court made and entered a Minute Order on 07/14/93 without findings of fact and conclusions of law; and

E. The Superior Court had acted arbitrarily, capriciously and without due regard for the Plaintiff's rights; and

F. Ms. Denman failed to appear for the hearing

on the Plaintiff's motion on 07/14/93, she knew she was required to appear, she had the ability to appear, she willfully neglected to appear and she gave no explanation to excuse her absence; and

G. Ms. Denman's contemptuous behavior is virulent and is continuing in nature and the circumstances are aggravated that justify immediate relief?

6. Was the Superior Court right in entering a Stay Order in this action on 10/25/93 despite the Plaintiff's evidence of the following:

A. The Stay Order is based on two prior orders of the Superior Court (dated 11/13/92 & 05/26/93) that are voidable; and

B. The Superior Court's order is clearly erroneous as a matter of law and substantially prejudicial to the Plaintiff's case?

7. Is the Plaintiff entitled to an award for the Costs of the Writ Proceedings pursuant to California Code of Civil Procedure §§1095, 1105 and other applicable case laws?

Appellant hereby petitions for review of the Order of the Court of Appeal of the State of California, Second Appellate District, Division 5, filed in this action on January 6, 1994, denying Appellant's Petition for Writ of Mandate and Prohibition. A copy of the order of the Court of Appeal showing the date of its filing is set forth herein as Appendix "A."

Review by this Court is necessary on the grounds that the order of the Court of Appeal is not in line with the authorities cited herein and this Court's ruling is necessary to secure uniformity of decision and important questions of law are at issue herein requiring settlement by this Court.

BRIEF IN SUPPORT OF REQUEST FOR REVIEW

I. THE SUPREME COURT OF THE STATE OF CALIFORNIA HAS JURISDICTION TO ENTERTAIN THIS PETITION

* "A decision of a Court of Appeal becomes final as to that court 30 days after filing, except that the decision becomes final as to that court immediately after filing upon the denial of a

petition for a writ within its original jurisdiction"

[California Rules of Court, Rule 24(a)].

* "When an original petition for a writ is made to a court of appeal and is denied, the appropriate method of obtaining review of that decision is to petition for review by the Supreme Court"

[California Rules of Court, Rule 28].

* "Petition for hearing in Supreme Court is a required method of review of denial by court of appeal of petition for extraordinary writ"

[Hagan v. Superior Court (1962) 57 Cal.2d 767, 769, 22 Cal. Rptr. 206, 371 P.2d 982 (writ of mandate); Linstead v. Superior Court (1936) 7 Cal.2d 347, 348, 60 P.2d 280 (writ of review); Paige Co. of N. Cal. v. Superior Court (1924) 194 Cal 795, 796, 231 P. 344 (writ of Prohibition); Trenouth v. Superior Court (1924) 193 Cal 330, 330, 223 P. 951 (writ of review)].

* "Generally, any acts that exceed the defined power of a court in any instance, whether that power is defined by constitutional provision, express statutory declaration, or rules developed by the court and followed under the doctrine of stare decisis, are in excess of jurisdiction insofar as that term is used to indicate that those acts may be restrained by prohibition"

[Abelleira v. District Court of Appeal (1941) 17

Cal. 2d 280, 291, 109 P.2d 942; Safer v. Superior Court (1975) 15 Cal. 3d 230, 242, 124 Cal.Rptr. 174, 540 P.2d 14].

"The term "jurisdiction" thus has a broader meaning when used in considering the availability of prohibition to review an order than when used in determining whether a court has jurisdiction over the subject matter and parties"

[Crittenden v. Superior Court (1964) 61 Cal.2d 565, 567, 39 Cal.Rptr. 380, 393 P.2d 692; Tide Water Assoc. Oil Co. v. Superior Court (1955) 43 Cal.2d 815, 821, 279 P.2d 35].

II. THIS PETITION IS FILED IN A TIMELY MANNER

* "A party seeking review must serve and file a petition within 10 days after the decision of the Court of Appeal becomes final as to that court"

[California Rules of Court, Rule 28(b)]. The decision of the Court of Appeal pertaining to this action was filed on January 6, 1994 (Ref: Appendix "A", attached hereto and made a part hereof). The tenth day after January 6, 1994 falls on January 16, 1994 which is a Sunday. Further, January 17, 1994 is a holiday on account of Martin Luther King Day. Hence, as long as

this Petition for Review is filed with the Supreme Court of the State of California on or before January 18, 1994, the said Petition is timely [West Pico Furniture Co. v. Superior Court (1961) 56 Cal.2d 407, 415, 15 Cal.Rptr. 119, 364 P.2d 295 (petition filed on Monday held to be timely under California Code of Civil Procedure §12a, when 10th day fell on preceding Sunday)].

III. THE COURT OF APPEAL DID NOT MAKE ANY DETERMINATION OF CAUSE IN THIS ACTION

* Article VI, §14 of the Constitution of the State of California states:

". . . [¶] Decisions of the Supreme Court and courts of appeal that determine causes shall be in writing with reasons stated." The summary denial of a petition for writ of mandate without issuance of an alternative writ does not determine a cause"

[People v. Medina (1972) 6 Cal.3d 484, 490, 99 Cal.Rptr. 630, 492 P.2d 686; Funeral Dir. Assn. v. Bd. of Funeral Directors (1943) 22 Cal.2d 104, 106, 136 P.2d 785].

* "The reviewing court can and should make factual determinations if the evidence is uncontra-

dicted. But when there is a total failure to make a factual determination on a material issue and when the evidence is highly conflicting, the reviewing court will not make findings. Instead, it will reverse the judgment and remand the cause to the trial court with directions to make the required factual determinations"

[Weisz Trucking Co. v. Emil R. Wohl Constr. (1970) 13 Cal.App.3d 256, 263-264, 91 Cal.Rptr. 489].

IV. GROUNDS FOR REVIEW IN SUPREME COURT

* "Review by the Supreme Court of a decision of a Court of Appeal will be ordered where it appears necessary to secure uniformity of decision or the settlement of important questions of law"

[California Rules of Court, Rule 29(a)].

* "Tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction under doctrine of stare decisis"

[Auto Equity Sales v. Superior Court (1962) 57 Cal.2d 450, 455, 20 Cal. Rptr. 321, 369 P.2d 937].

"Refusal by inferior tribunal to follow law declared in controlling higher court decision is jurisdictional defect rendering judgment of either trial or appellate court subject to restraint by prohibition or annulment on certiorari"

[Auto Equity Sales v. Superior Court (1962) 57 Cal.2d 450, 456, 20 Cal. Rptr. 321, 369 P.2d 937].

* When the California Supreme Court decides a question of California law, its decision must be followed by all the lower courts in the state. The doctrine of stare decisis mandates that once an issue has been resolved by a higher court, the lower courts must abide by that resolution even if they disagree. Prior decisions by the same court or other courts on the same level are generally followed. Thus, state decisis promotes the predictability and stability of the legal system.

V. LAW GOVERNING TRANSFER OF CAUSES BY THE SUPREME COURT

* Article VI, §12 of the Constitution of California states:

"(a) The Supreme Court may, before decision, transfer to itself a cause in a court of appeal. It may, before decision, transfer a cause from itself to a court of appeal or from one court of appeal or division to another. The court to which a cause is transferred has jurisdiction. (b) The

Supreme Court may review the decision of a court of appeal in any cause."

VI. APPELLANT'S PETITION FOR WRIT OF MANDATE AND PROHIBITION FILED WITH COURT OF APPEAL WAS TIMELY

* To appeal a trial court order or judgment, a party must file a notice of appeal in the trial court. Generally, notice of appeal must be filed within sixty days of the earlier of the following two dates: the mailing of a notice of entry of judgment or appealable order by the clerk of the court, or the service of such a notice by any party [California Rules of Court, Rule 2].

Both the party who submitted the judgment or order and the clerk of the court must mail such notices to all the parties to the action [California Code of Civil Procedure §664.5]. In the unlikely event that such notice is not provided, then the notice of appeal must be filed within 180 days of the entry of the order or judgment. In the instant action, the clerk of the Superior Court of the State of California in Norwalk DID NOT ever mail any notice whatsoever with respect to any of the appealable orders of the court to the Appellant. As such, the outer limit of 180 days is applicable to the Appellant in this action for filing petition for writs of mandate and prohibition.

Under the circumstances, the Appellant's Petition for Writ of Mandate and Prohibition that was filed with the Court of Appeal on January 3, 1994 was timely in respect of all of the orders of the Superior Court that were made on the following dates:

1. October 25, 1993;
2. October 13, 1993; and
3. July 14, 1993.

As regards the orders of the Superior Court that were made on May 26, 1993, on January 8, 1993 and on November 13, 1992, the reviewing courts have to necessarily review the said orders in order to review the Superior Court's Stay Order of October 25, 1993 since the said Stay Order is totally based on the orders of the Superior Court that were made on May 26, 1993, on January 8, 1993 and on November 13, 1992. Hence, the Appellant's Petition for Writ of Mandate and Prohibition that was filed with the Court of Appeal on January 3, 1994 was timely in respect of all of the orders of the Superior Court that are challenged in the

said Petition.

* In addition, there are a number of Case Laws that support the position that there is no general statutory time limit on the application for writs. For instance, in State of California v. Superior Court [263 C.A.2d 396; 69 Cal.Rptr. 683], the California Appellate Court clearly ruled saying that although the state did not file its petition therein until four months after denial of its motion for summary judgment, there is no statutory time limit on the application for writs and no prejudice resulting from the delay had been shown and, Respondent's contention of laches was, therefore, without merit [Wilke v. Coinway, 257 Cal.App.2d 126, 140 (64 Cal.Rptr. 845)]. In Popelka, Allard, McCowan & Jones v. Superior Court [107 Cal.App.3d 496; 165 Cal.Rptr. 748], the law firm filed its petition for mandate in the court of appeal on October 16, 1979. It was denied as untimely because it was filed well over 60 days beyond the July 10 order granting plaintiff's motion in that action, and over 60

days after the second order of August 16. The law firm sought hearing in the California Supreme Court. That court granted a hearing on January 8, 1980, and transferred the matter to the court of appeal with directions to issue an alternative writ.

"An appellate court may consider a petition for an extraordinary writ at any time"

[Bryant v. Superior Court (1936) 16 Cal.App.2d 556, 561 (61 P.2d 483)]. In Bryant v. Superior Court, supra, the court of appeal stated that there is no statutory provision placing a limitation on the time within which a petition for a writ of review must be filed. The remedy may be barred by laches, although

"there is no hard-and-fast rule by which to determine whether laches has barred the remedy."

[Reid v. Superior Court, 44 Cal.App.349 (186 Pac. 634)]. In the case of Security-First National Bank v. Superior Court, [132 Cal.App. 683 (23 Pac (2d) 1055)], a writ of review was sought of an order granting a new trial, which order had been made six months prior thereto.

* Further,

"there is a strong public policy favoring hearing appellate causes on the merits rather than depriving a party of his right of appeal because of technical noncompliance in matters of form"

[Litzmann v. Workman's Comp. App. Bd. (1968) 266 Cal. App. 2d 203, 205, 71 Cal. Rptr. 731; Peak v. Nicholson (1943) 61 Cal.App.2d 355, 359, 143 P.2d 78].

VII. APPELLANT MEETS STANDARDS FOR TIME EXTENSIONS FOR FILING PETITIONS WITH REVIEWING COURTS

* The Appellant in this action is also responsible for preparing an appellate brief relating to an appeal that is now pending before the U.S. Court of Appeals for the Ninth Circuit in San Francisco. The Appellant's appellate brief in that action was originally due on January 10, 1994. However, the court reporters pertaining to that action did not prepare the transcripts of court hearings in a timely manner and hence, the Appellant had to file a motion in the U.S. Court of Appeals for the Ninth Circuit seeking exten-

sion of time to file her appellate brief. This was a time-limited commitment that the Appellant did not foresee ahead of time. Further, the adverse party in that action filed a frivolous motion in the U.S. Court of Appeals for the Ninth Circuit during the week of December 19, 1993. Although the said motion is frivolous and will be denied by the U.S. Court of Appeals, the Appellant nevertheless had to expend a good deal of time over legal research, draft preparation, etc. etc. in order to put forth a quality opposition to the said motion. This was another time-limited commitment that the Appellant did not anticipate. These two unanticipated time-limited motions took the appellant's time away from her work on her Petition for Writ of Mandate and Prohibition that the Appellant filed with the Court of Appeal on January 3, 1994 which Petition would otherwise have been filed by December 20, 1993. Also, there has been no undue delay and the Defendant-Respondent will not be put in danger of a trial or a retrial. Since the 1961

amendments of sections 1691 and 1693 of the Civil Code,

"reasonable diligence or promptness on the part of the party seeking rescission is no longer a prerequisite for the remedy. The new requirement is essentially one of freedom from laches. Its application depends on whether, under the particular facts, the delay has in any way prejudiced the defendant-respondent"

[Hil-Mac Corp. v. Mendo Wood Products, Inc. 235 Cal.App.2d 526 (45 Cal.Rptr. 396)]. In the instant case, there is no evidence of any kind of prejudice to the defendant-respondent and it would be error to deny Plaintiff the relief requested [Eck v. McMichael 176 Cal.app.2d 368, 370 (1 Cal.Rptr. 369)].

* The reviewing courts should also take into account the number and complexity of the issues raised by the Plaintiff in her Petition for Writ of Mandate and Prohibition, including a description of those issues, and the length of the record, which must be described, including the number of relevant exhibits. Plaintiff's record is more than an average-length record.

* It is recognized that, for a variety of legit-

imate reasons, parties may not always be able to prepare briefs or other documents within normal rule times. Preparing briefs or other documents which fully advance the parties' interests, and are accurate, clear, concise, and complete so they assist the courts, requires adequate time. When good cause appears, an extension of time shall therefore be granted.

* In light of the foregoing, the Appellant meets the standards for extensions of time to file Petitions with the reviewing courts [California Rules of Court, Rule 45.5].

VIII. MONETARY SANCTION ORDERS OF A SUPERIOR COURT CAN BE REVIEWED BY A COURT OF APPEAL UPON PETITION FOR AN EXTRAORDINARY WRIT

* The orders of the Superior Court that were made on November 13, 1992, January 8, 1993, May 26, 1993 and October 25, 1993 involve monetary sanctions against the Appellant and hence, the said orders can be reviewed by higher level courts pursuant to California Code of Civil

Procedure §904.1.

* Multiple appeals in a single case would waste judicial time and resources and would be unnecessarily burdensome on the parties. A single writ, after the trial court has determined all the issues in dispute between the parties, promotes efficiency. The reviewing court can consider all of the claims of error at one time. Further, the Superior Court's errors have caused prejudice to the substantial rights of the Appellant [Estate of Volen (1953) 121 Cal.App. 2d 161, 166, 262 P.2d 658].

* A trial court error is prejudicial if, after examining the entire case, it seems probable that a result more favorable to the Appellant would have been reached if the error had not occurred. The reviewing court will consider the total circumstances of the particular case.

IX. THE REVIEWING COURTS CAN REVIEW THE SUPERIOR COURT'S ORDER DENYING APPELLANT'S MOTION FOR CONTEMPT PROCEEDINGS AGAINST MS. DIANA DENMAN

* The reviewing courts can review the Superior Court's order denying Appellant's Motion for Contempt Proceedings against the defense counsel, Ms. Diana Denman pursuant to the "Collateral Order Exception to the Final Judgment Rule" although the case has not yet reached final judgment. California's Collateral Order Exception has the following requirements:

"(1) the decision of the trial court is final; and (2) it relates to some collateral issue distinct and severable from the merits of the litigation."

The California Supreme Court has held that review of such an order is within the exception [Meehan v. Hopps, 45 Cal.2d 213, 288 P.2d 267 (1955)]. The Supreme Court noted that the order was collateral to the merits of the case and that it represented a final determination of the particular issue by the trial court.

* The Superior Court denied Appellant's Motion for Contempt Proceedings against Ms. Diana Denman on July 14, '93 on the basis of the limited information that was available to the court as of then. However, the Appellant had shown in her Petition for Writ of Mandate and Prohibition that Ms. Denman's contemptuous behavior is virulent and is continuing in nature. In Merrill v. Department of Motor Vehicles [(1969) 71 Cal.2d 907, 915, 80 Cal.Rptr. 89, 458 P.2d 33], the California Appellate Court ruled saying that

"a factual finding can be overturned if the evidence received by the trial court is insufficient as a matter of law to sustain the finding."

* "The doctrine of law of the case is generally applicable in writ proceedings as well as appeals which permits, wisely, of a change of decision, where, among other things, intervening between a first and second appeal, there has been a material change in the situation either as to the facts or in the applicable law"

[143 F.2d 484, 486].

* Contempt proceedings against Ms. Diana Denman are warranted pursuant to California Code of Civil Procedure §526(a)(1) thru (6). Ms. Denman's abuse of the process or proceedings of

the court and her falsely pretending to act under authority of an order or process of the court constitutes contempt, [California Code of Civil Procedure §1209(a)(4)].

"An attorney has a duty to maintain respect due to the courts and judicial officers"

[Business and Professions Code § 6068].

* Judicial officers possess the inherent power of contempt and contempt is summary in nature. The legislative penalties for contempt include a fine not exceeding $1,000.00, imprisonment not exceeding five days, or both [California Code of Civil Procedure §1218].

* "The right to relief in a mandate proceeding is determined by facts existing at the time that the petition is filed"

[King v. Martin (1971) 21 Cal.App. 3d 791, 795, 98 Cal.Rptr. 711; Palmer v. Fox (1953) 118 Cal.App.2d 453, 456, 258 P.2d 30]. Hence, while reviewing the Superior Court's order denying Appellant's Motion for Contempt Proceedings against Ms. Diana Denman, the reviewing courts have to take into account Ms. Denman's contemptuous behavior both before and after the Superior

Court's order was made.

"A court may allow a writ of prohibition when the act to be prohibited is a continuing one and the circumstances are aggravated as to justify immediate relief. Continuing acts also may be subject to prohibition when, because of delay, there would be consequential damages"

[Melancon v. Superior Court (1954) 42 Cal.2d 698, 704-705, 268 P.2d 1050]. It should be noted that

"a question involved in a prohibition proceeding will not be treated as moot when it is one of continuing importance to the parties, when the situation is not one in which the parties are no longer interested in the legal issue involved, when no purpose but delay would be served by treating the question as moot, and when the orderly administration of justice compels a determination immediately"

[DiGiorgio Fruit Corp. v. Dept. of Employment (1961) 56 Cal.2d 54, 58-59, 13 Cal. Rptr. 663, 362 P.2d 487 (mandate proceeding); Heavy Highway Bldg. Constr. Teamsters Committee v. Superior Court (1962) 203 Cal.App. 2d 591, 597, 21 Cal.Rptr. 840]. The question of Ms. Denman's contemptuous behavior with reference to this action is certainly of continuing importance to the Appellant and, the Appellant is very much interested in the legal issue involved in the matter.

"A reviewing court that entertains an original proceeding for writ of mandate should properly consider all relevant evidence, including facts not existing until after petition for writ was filed"

[Cooke v. Superior Court (1989) 213 Cal.App. 3d 401, 407, 261 Cal.Rptr. 706]. By denying Appellant's Motion for Contempt Proceedings against the defense counsel, Ms. Diana Denman, the Superior Court had violated its duty toward her by denying her clear and present right.

X. THERE IS NO PLAIN, SPEEDY, & ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW OTHER THAN APPELLANT'S PETITION FOR WRIT OF MANDATE AND PROHIBITION

* There is no appeal from the Superior Court's orders of 10/25/93, 10/13/93, 07/14/93, 05/26/93, 01/08/93 and 11/13/92 and thus, the Appellant's Petition for Writ of Mandate and Prohibition can be justified on the ground that

"there is not a plain, speedy, and adequate remedy in the ordinary course of law"

[California Code of Civil Procedure §1103; Harden

v. Superior Court, 44 Cal.2d 630, 634 (284 P.2d 9); 3 Witkin, Cal. Procedure, §36, p. 2510].

* In respect of the Superior Court's 07/14/93 order of denial of the Appellant's Motion for Contempt Proceedings against the defense counsel, Ms. Diana Denman, the Appellant has no statutory right of appeal from the said order. A number of California cases have permitted relief by way of mandate under analogous circumstances when no right of appeal existed [People v. Superior Court (Gonzales) (1978) 78 Cal.app.3d 134, 143 (144 Cal.Rptr. 89)].

* In Coulter v. Superior Court [1978) 21 Cal.3d 144 (145 Cal.Rptr. 534, 577 P.2d 669)], the California high court ruled saying that review by prerogative writ of trial court rulings on pleading matters could be permitted

"when it appears that the trial court has deprived a party of an opportunity to plead his cause of action or defense, and when that extraordinary relief may prevent a needless and expensive trial and reversal"

(21 Cal.3d at p.148). The Appellant's situation is similar in that the Superior Court has

deprived the Appellant of an opportunity to plead her cause of action and the extraordinary relief sought might prevent a needless and expensive trial and reversal. §1103 of the California Code of Civil Procedure authorizes the issuance of the writ, even though an appeal may be taken, if the remedy by appeal is inadequate. In the usual situation an appeal is considered an adequate remedy, "but no hard and fast rule can be laid down to determine in advance whether it fully meets the requirements of justice in a particular case." Where an order is not appealable, but is reviewable only upon appeal from a subsequent judgment, various factors, such as expense of proceeding with a trial and prejudice resulting from delay, may operate to make that remedy inadequate [Phelan v. Superior Court 35 Cal.2d 363, 370 (217 P.2d 951)]. In City & County of San Francisco v. Superior Court [38 Cal.2d 156, 160 (238 P.2d 581)], the reviewing court held that prohibition would lie in a case where it appeared that otherwise a failure of justice would occur

in a matter of public importance by a wrongful or excessive exercise of jurisdiction. It would appear, therefore, that petitioners do not have a speedy and adequate remedy by appeal under the circumstances of the case.

* There is a likelihood that the Appellant is going to suffer harm or prejudice in a matter that cannot be corrected on appeal on account of the Superior Court's orders of 11/13/92 and 01/08/93 that improperly granted the defendant discovery of privileged information pertaining to the Appellant. In Roberts v. Superior Court [(1973) 9 Cal.3d 330, 335, 107 Cal. Rptr. 309, 508 P.2d 309], the Supreme Court issued a writ of prohibition barring production and inspection of psychotherapist's records concerning mental condition of personal injury plaintiff.

* In view of all of the circumstances as mentioned above, a determination of the jurisdiction of the superior court through Appellant's application for a writ is justified.

XI. ISSUANCE OF PEREMPTORY WRIT IN THE FIRST INSTANCE BY THE REVIEWING COURT IS PROPER

* In recent years Courts of Appeal have increasingly resorted to issuance of a peremptory writ in the first instance when it appears that the petition and opposing papers on file adequately address the issues raised by the petition, that no factual dispute exists, and that the additional briefing that would follow issuance of an alternative writ is unnecessary to disposition of the petition [Leach v. Superior Court (1980) 111 Cal.App.3d 902, 169 Cal.Rptr. 42; Blumenthal v. Superior Court (1980) 103 Cal.app. 3d 317, 163 Cal.Rptr. 39; Tahoe Forest Inn v. Superior Court (1979) 99 Cal.App.3d 509, 160 Cal.Rptr. 314].

XII. THE CAUSE IS APPROPRIATE FOR REVIEW BY THE SUPREME COURT

* In view of the foregoing arguments, it should be evident that Review of the 01/06/94 Order of the Court of Appeal by the Supreme Court is necessary to secure uniformity of decision and to

settle important questions of law.

XIII. REQUEST FOR AWARD OF COSTS OF THE WRIT PROCEEDING IN FAVOR OF THE APPELLANT

* Pursuant to California Code of Civil Procedure §§1095 and 1105, the Appellant requests that an award be made in favor of the Appellant for the costs of the writ proceedings.

XIV. CONCLUSION

* In summary, it is clear that the Superior Court erred on a number of occasions and that each of such errors caused substantial prejudice to the Appellant.

WHEREFORE, Appellant Vathsala Srinivasan respectfully requests that this Court grant this petition for review and order the within appeal transferred to it.

DATED:01/18/94

Respectfully Submitted,

By: V Srinivasan

Vathsala Srinivasan
Appellant, in pro per

VERIFICATION

I, Vathsala Srinivasan, am the Appellant in the above-entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: January 18, 1994
PLACE: Colton, California

V Srinivasan

Vathsala Srinivasan

OFFICE OF THE CLERK
COURT OF APPEAL
STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT
JOSEPH A. LANE, CLERK

DIVISION: 5 DATE: 01/06/94

Vathsala Srinivasan
1401 E. Santo Antonio Dr.
#140
Colton, CA 92324

RE: Srinivasan, Vathsala
vs.
S.c.l.a.
Rio Hondo Community College District
2 Civil B080910
Los Angeles No. VC 007518

THE COURT:

The petition for writ of Mandate, Prohibition is denied.

Appendix A

PROOF OF SERVICE BY MAIL
(CCP §§ 1013(a), 2015.5)

I, the undersigned, hereby declare under penalty of perjury as follows:

I am a citizen of the United States, and over the age of eighteen years, and am a party to the within action; my address is 1401 East Santo Antonio Drive, #140, Colton, California 92324.

On this date, I served the interested parties in this action the within document:

PETITION FOR REVIEW (CRC Rule 28)

by placing a true copy thereof enclosed in a sealed envelope, postage prepaid, in the United States Mail at Colton, California, addressed as follows:

Clerk of the Court (an original + 13 copies)
Supreme Court of the Via Express Mail, Article
State of California No.: FB340519476US
303 Second Street
8th Floor
San Francisco, CA 94107

Clerk of the Court
Court of Appeal
State of California
Second Appellate District
300 S. Spring Street
Room 2217
Los Angeles, CA 90013

(1 copy)
Via Certified
Mail, Article No.:
P 032 051 609

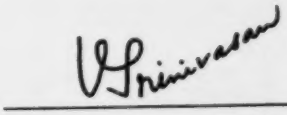
Hon. Daniel Solis Pratt
Department "C"
Los Angeles Superior
Court
12720 Norwalk Blvd.
Norwalk, CA 90650

(1 copy)
Via Certified Mail,
Article No.: P 032 051 611

Ric C. Ottaiano, Esq.
LYNBERG & WATKINS
Suite 101
2020 E. First Street
Santa Ana, CA 92705

(1 copy)
Via Certified
Mail, Article No.:
P 032 051 612

Executed at Colton, California on January 18, 1994.



Vathsala Srinivasan

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

CLERK'S OFFICE
COURT OF APPEAL
SECOND DISTRICT
RECEIVED JAN. 3, 1994
JOSEPH A. LANE, CLERK

VATHSALA SRINIVASAN, Petitioner,	)	**CIVIL NO.: B080910** (DIVISION 5)
vs.	)	**PETITION FOR WRIT OF MANDATE AND PROHIBITION**
Superior Court of the State of California Respondent	)	**[Code Civ. Proc. §§ 1085, 1086, 1102, 1103; Cal. Rules of Ct., Rule 56]**
RIO HONDO COMMUNITY COLLEGE DISTRICT Real Party In Interest	)	

The Honorable Daniel Solis Pratt, Judge
[Case Number VC7518]

Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Colton, California 92324

Telephone: (909) 824-3332

Petitioner, in pro per

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Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Colton, California 92324

Telephone: (909) 824-3332

Petitioner, in pro per

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
[DIVISION 3]

VATHSALA SRINIVASAN, Petitioner,	)	**CIVIL NO.: B080910**
vs.	)	**PETITION FOR WRIT OF MANDATE AND PROHIBITION**
SUPERIOR COURT OF THE STATE OF CALFIORNIA Respondent	)	**[Code Civ. Proc. §§ 1085, 1086, 1102, 1103; Cal. Rules of Ct., Rule 56]**
RIO HONDO COMMUNITY COLLEGE DISTRICT Real Party in Interest	)	

TO THE HONORABLE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE COURT OF APPEAL OF THE SECOND APPELLATE DISTRICT, DIVISION THREE OF THE STATE OF CALIFORNIA:

Petitioner alleges:

1. Petitioner is Vathsala Srinivasan, the plaintiff in the action entitled Vathsala Srinivasan, Plaintiff, vs. Rio Hondo Community College District, Defendant, Civil Action No. VC7518, now pending before respondent court.

2. Respondent is the Superior Court of the State of California, County of Los Angeles,

Southeast District [Norwalk], in which the above-entitled action is pending.

3. Real party in interest is Rio Hondo Community College District and has an interest that is directly affected by this proceeding in that it is the defendant in the above-entitled action.

4. On October 29, 1991, petitioner filed the action described in Paragraph 1 of this petition. A copy of that complaint is reproduced in pp. 273-289 in Volume 1 of 3 of the Supporting Documents accompanying this petition and made a part hereof. That complaint seeks recovery for damages suffered by the petitioner due to (1) National Origin Discrimination and (2) Breach of Public Policy – Wrongful Employment Practice by the Real Party in Interest.

5A. On September 28, 1993, petitioner filed and served a Notice of Motion and Motion to Vacate the Arbitration Award and a Motion to Tax Costs Against the Defendant in respect of an arbitration award that was made in this actin on September 14, 1993. A copy of the said motion is reproduced in pp. 1-55 in Volume 1 of 3 of the Supporting Documents accompanying this petition and made a part hereof. In the said motion, the

petitioner asserted that the delay by the arbitrator by 58 (minimum) to 83 (maximum) days in this Case, in holding the arbitration hearing, constituted reversible error and that the defense attorney (Diana C. Denman) had procured the arbitration award in favor of the defendant through fraud and undue means. A copy of the said motion was served on the arbitrator as well.

On October 5, 1993, the Real Party in Interest served its opposition to the petitioner's motion which is reproduced in pp. 56-61 in Volume 1 of 3 of the Supporting Documents accompanying this petition and made a part hereof. **In the said opposition, the Real Party in Interest did not dispute any of the 13 factual contentions that the Petitioner had raised in its motion in support of the contention that the Real Party in Interest had procured the arbitration award in its favor through undue means. Further, neither the arbitrator nor the Real Party in Interest had shown any persuasive reason as to why the arbitration hearing was delayed inordinately.** On behalf of the arbitrator, the Real Party in Interest had proffered an excuse for the delay in holding the arbitration hearing by saying that the arbitrator's relocation and/or change of

employment might have caused the said delay (Ref: lines 7-9 in p. 58 in Vol. 1 of 3 of the Supporting Documents). Regardless of what the reasons are for the delay, the arbitrator owes a duty to turn the Case over to the Arbitration Administrator for reassignment to another conscientious arbitrator when he knew of his inability to hold the arbitration hearing in a timely manner.

5B. On October 8, 1993, the Petitioner filed and served a reply brief in support of its motion which is reproduced in pp. 62-73 in Volume 1 of 3 of the Supporting Documents accompanying this petition and made a part hereof. In the said reply brief, the Petitioner has asserted that the delay by the arbitrator in holding the arbitration hearing was prejudicial to the Petitioner and that the Real Party in Interest had procured the arbitration award in its favor <u>through undue means</u> (Ref: pp. 62-73 and 248 in Volume 1 of 3 of the Supporting Documents).

5C. The tentative ruling that the Respondent had made prior to the hearing on the motion is reproduced in p. 74 in Volume 1 of 3 of the Supporting Documents accompanying this petition and made a part hereof. It is evident from

the said tentative ruling that the respondent had not read the moving papers thoroughly before making the tentative ruling and as such, the Respondent was not fully prepared when it made the tentative ruling. First of all, in the said tentative ruling, the Respondent had stated that the Petitioner had failed to demonstrate that the arbitration was procured by corruption or fraud. The Respondent had failed to notice that in addition to corruption and fraud, **"undue means"** employed by a party in procuring an arbitration award warrants vacation of the award so procured (Ref: CCP § 1286.2(a)). Secondly, in the said tentative ruling, the Respondent had stated that the Petitioner had failed to demonstrate that its rights were prejudiced by any delay in scheduling the arbitration hearing when, in fact, the Petitioner had asserted just that in its pleadings (Ref: lines 6-14 in p. 63 and lines 1-13 in p. 248 in Volume 1 of 3 of the Supporting Documents).

5D. A hearing was held on the Petitioner's motion on October 13, 1993 and a copy of the Reporter's Transcript of the said Hearing is reproduced in pp. 75-79 in Volume 1 of 3 of the Supporting Documents accompanying this petition

and made a part hereof. During the said Hearing, the Respondent acknowledged that the Petitioner had been prejudiced due to the arbitrator's delay in holding the arbitration hearing (Ref: line 8 on p. 77 in Vol. 1 of 3 of the Supporting Documents). Further, even during the said Hearing, the Real Party in Interest did not dispute Petitioner's 13 factual contentions in support of its argument that the Real Party in Interest had obtained an arbitration award in its favor by **undue means**. However, the Respondent had failed to address that issue. In an attempt to cover up the fact that it procured the arbitration award in its favor through **undue means**, the Real Party in Interest subsequently filed a frivolous motion to dismiss the Petitioner's Complaint on October 7, 1993 which motion was denied by the Respondent (Ref: pp. 83-222 in Vol. 1 of 3 of the Supporting Documents) on October 25, 1993. It is hard to conceive that out of the 5 documents that the Petitioner had transmitted via facsimile to the Real Party in Interest on August 11, 1993, the Real Party in Interest had failed to receive the most important of the 5 documents, viz., Petitioner's "NOTICE OF INTENTION TO OFFER DEPOSITIONS IN EVIDENCE DURING THE

ARBITRATION HEARING" (Ref: pp. 31-35 in Vol. 1 of 3 of the Supporting Documents). Incidentally, while serving the "DECLARATION OF DIANA C. DENMAN IN REPLY TO PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO DISMISS" on the Petitioner, the Real Party in Interest had failed to enclose its purported Exhibit A to the said document although the Exhibit Tab "A" was enclosed (Ref: pp. 209-210 in Vol. 1 of 3 of Supporting Documents).

5E. Respondent's action in denying Petitioner's motion to vacate the arbitration award and motion to tax costs against the Real Party in Interest was an abuse of discretion in that although the Respondent acknowledged that the Petitioner had been prejudiced due to the arbitrator's delay in holding the arbitration hearing (Ref: line 8 on p. 77 in Vol. 1 of 3 of the Supporting Documents), the Respondent failed to vacate the arbitration award. Once discretion is exercised, mandate will lie to remedy an abuse thereof. Besides, the Respondent did not address the issue that the Real Party in Interest (particularly, Ms. Diana C. Denman), procured the arbitration award through **undue means**. As a matter of fact, in light of all the additional information that is now available before this

Court that establish the fact that the Real Party in Interest (particularly, Ms. Diana Denman), corruptly attempted to influence the arbitrator in respect to his verdict in proceeding pending or about to be brought before him by means of persuasion that had the effect of tainting the proceedings, the Real Party in Interest (particularly, Ms. Diana Denman) is punishable pursuant to Penal Code §95.

5F. In addition, the arbitration award warrants reversal for all of the following reasons: (i) The arbitrator failed to find on all issues submitted to arbitration which conduct substantially prejudiced the rights of the Petitioner; (ii) the arbitrator exceeded his powers and the award cannot be corrected without affecting the merits of the decision on the controversy submitted.

5G. Petitioner is a person beneficially interested in the issuance of a peremptory writ of mandate by virtue of the fact that she is the plaintiff in the above-described action and vacation of the arbitration award, taxing costs against the Real Party in Interest and imposing sanctions on Ms. Diana Denman pursuant to Penal Code § 95 would help to mitigate the unduly

oppressive and unconscionable acts of the defense counsel, Ms. Diana Denman, that have prejudiced the Petitioner tremendously.

5H. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law in that mandate is proper to avert the expense of proceeding with an unnecessary trial especially when expense of proceeding through trial as individual litigant would be "grossly disproportionate" to damages Petitioner might expect to recover in litigation.

5I. This petition is made to this Court in the first instance because it involves review of an order made by the Superior Court of the State of California, County of Los Angeles, which renders it proper and necessary that the writ issue from an appellate court.

5J. The appellate court can grant this extraordinary writ because the issues raised are of such public importance that expedited appellate review is necessary.

6A. On October 19, 1992, Petitioner filed and served a Notice of Motion and Motion to Quash Deposition Subpoenas issued by the Real Party in Interest for Production of Business Records pertaining to the Petitioner, motion for Protective

Order and for Award of Monetary Sanction against the Real Party in Interest. A copy of the said motion is reproduced in pp. 250-298 in Volume 1 of 3 and in pp. 299-301 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof. In the said motion, the Petitioner asserted **privilege, privacy and relevance** as the reasons that warranted the quashing of the said subpoenas that are oppressive and unreasonable. On November 6, 1992, the Real Party in Interest served its opposition to the Petitioner's motion which is reproduced in pp. 302-322 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof.

6B. On November 8, 1992, the Petitioner filed and served a response to the opposition of the Real Party in Interest which is reproduced in pp. 323-393 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof. In the said response to the opposition, the Petitioner had asserted that the Real Party in Interest was engaging in pure fishing expedition and was causing unwarranted annoyance, embarrassment and oppression.

6C. A hearing was held on the Petitioner's

motion on November 13, 1992 and a copy of the Reporter's Transcript of the said Hearing is reproduced in pp. 394-401 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof.

6D. Following the Court Hearing, a Minute Order was entered by the Respondent a copy of which is reproduced in p. 402 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof. It is to be noted that the said Minute Order was made and entered without findings of fact and conclusions of law. Further, the Respondent had exceeded its jurisdiction by improperly granting discovery of privileged information pertaining to the Petitioner. Besides, it should be evident that the information sought by the Real Party in Interest through its subpoenas cannot, as a reasonable possibility, lead to the discovery of admissible evidence or be helpful in preparing for trial. This is so, because, none of the items of information that were sought by the Real Party in Interest in its subpoenas were at issue in this action.

6E. Respondent's action granting discovery was in excess of its jurisdiction and an abuse of discretion in that it was a violation of privi-

lege or of the provisions of California Constitution, Article I, §13 (unreasonable searches and seizures).

6F. On November 19, 1992, the Real Party in Interest served a Notice of Ruling pertaining to the order made by the Respondent a copy of which is reproduced in pp. 403-405 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof. Two days prior to that, i.e., on November 17, 1992, the Petitioner transmitted a letter via facsimile to the Real Party in Interest informing the Real Party in Interest of the Petitioner's intent to appeal the Respondent's order of November 13, 1992 and advising the Real Party in Interest to cease all efforts to obtain any of the records in its subpoenas until such time that the said appeal was decided by the court (Ref: pp. 406-407 in Volume 2 of 3 of the Supporting Documents). Petitioner had time until January 12, 1993 to file the said appeal.

6G. In the meantime, on December 14, 1992, the Petitioner filed and served a Motion for Reconsideration of the Respondent's prior order of November 13, 1992 a copy of which is reproduced in pp. 408-466 in Volume 2 of 3 of the

Supporting Documents accompanying this petition and made a part hereof.

6H. On December 30, 1992, the Real Party in Interest served its opposition to the said motion for reconsideration a copy of which is reproduced in pp. 467-472 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof.

6I. A Court Hearing on the said motion was held on January 8, 1993 and a copy of the Reporter's Transcript of the said Hearing is reproduced in pp. 473-481 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof. During the said Hearing, the Real Party in Interest mentioned that it had already obtained the documents that it was seeking in its subpoenas notwithstanding the fact that the Petitioner had instructed the Real Party in Interest to cease all efforts to obtain the said documents pending resolution of the Petitioner's appeal whose time had not run out as of then (Ref: lines 23-28 in page 479 in Volume 2 of 3 of the Supporting Documents). Thus, the Real Party in Interest is clearly in contempt of court on account of: (i) its unlawful practice of law; and (ii) its engagement in misconduct

designed to misuse the adversary system to obtain an unfair advantage.

6J. Following the Court Hearing, a Minute Order was entered by the Respondent a copy of which is reproduced in p. 482 in Volume 2 of 3 of the Supporting Documents accompanying this petition and made a part hereof. Once again, it is to be noted that the said Minute Order was made and entered without findings of fact and conclusions of law.

6K. On October 7, 1993, the Real Party in Interest served a motion to dismiss the Petitioner's Complaint alleging that the Petitioner's non-payment of the sanction of $750.00 that the Respondent's order of January 8, 1993 entailed warranted the said dismissal. However, the Respondent did not dismiss the action; rather the Respondent stayed all further proceedings in this action pending compliance with its order of January 8, 1993 (Ref: p. 215 in Volume 1 of 3 of the Supporting Documents).

6L. Petitioner is a person beneficially interested in the issuance of a peremptory writ of prohibition by virtue of the fact that she is the plaintiff in the above-described action and an annulment of the Respondent's January 8, 1993

order and concurrent imposition of sanctions against Ms. Diana Denman, would protect Petitioner's legal right that is clear, present, certain, and substantial. Further, the issuance of the said writ would arrest the proceedings of the Respondent which were in excess of its jurisdiction.

6M. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law in that an appeal is not a speedy or adequate remedy by which to determine important constitutional issues.

6N. This petition is made to this Court in the first instance because it involves review of an order made by the Superior Court of the State of California, County of Los Angeles, which renders it proper and necessary that the writ issue from an appellate court.

6O. The appellate court can grant this extraordinary writ because the discovery order issued by the Superior Court violates a privilege.

7A. On November 13, 1992, the Petitioner served a Notice of Deposition on the Real Party in Interest wherein, the Petitioner had noticed the deposition of Mr. Ron Cataraha, Director-

Human Resources, Rio Hondo Community College District, for December 18, 1992, commencing at 10:00 a.m. at Court Reporters of San Bernardino, San Bernardino, California (Ref: pp. 634-642 in Volume 3 of 3 of the Supporting Documents). In the same Notice of Deposition, the Petitioner had requested the Real Party in Interest to produce and permit inspection and copying of the documents, records, and other tangible things described in the Petitioner's First Request for Production of Documents at Court Reporters of San Bernardino. In other words, the oral deposition of Mr. Ron Cataraha and the production of documents by the Real Party in Interest were scheduled to take place on the same day at the same site. Petitioner intended to question the witness (i.e., Mr. Ron Cataraha) then and there regarding entries in the documents. Petitioner also intended to use the witness' (Mr. Cataraha's) testimony to lay a foundation for admission of the documents into evidence at trial. On December 8, 1992, the Real Party in Interest served its Responses to Petitioner's First Request for Production of Documents (Ref: pp. 644-649 in Volume 3 of 3 of the Supporting Documents). As can be seen from the said

Response, the Real Party in Interest had made incomplete and evasive responses and had interposed too many unfounded objections to the Petitioner's Request. Further, the Real Party in Interest failed to show up for the properly noticed deposition on December 18, 1992 at the Court Reporters of San Bernardino (Ref: pp. 653-654 in Volume 3 of 3 of the Supporting Documents).

7B. Between January 1993 and June 1993, the Petitioner conducted discovery in this action via Interrogatories and Requests for Admissions (Ref: Exhibits I, J, K, L, M, N, O, P, Q, R, S, and T in the First Request for Judicial Notice in Support of Motion by Plaintiff for Summary Judgment lodged with this petition).

7C. On April 28, 1993, the Petitioner served a Deposition Subpoena for Production of Business Records on the Real Party in Interest (Ref: pp. 603-608 in Volume 3 of 3 of the Supporting Documents). The documents sought via the said subpoena were almost identical to the documents that were sought via the Petitioner's earlier First Request for Production of Documents (Ref: pp. 637-641 in Volume 3 of 3 of the Supporting Documents).

7D. On May 5, 1993, the Real Party in Interest served a Notice of Motion and Motion to Quash the Petitioner's Deposition Subpoena (Ref: pp. 486-524 in Volume 2 of 3 of the Supporting Documents). In the said motion, the Real Party in Interest alleged that the said Deposition Subpoena was an improper form of discovery on a party pursuant to California Code of Civil Procedure §§ 1987.1, 1987.2, and 2020. However, none of the said statutes prohibit discovery via deposition subpoena for records on a party to an action. Besides, the Real Party in Interest did not apply for any kind of protective order in this matter.

7E. On May 19, 1993, the Petitioner filed and served her Opposition to the Motion to Quash brought by the Real Party in Interest and, in the said Opposition, the Petitioner sought sanctions against the Real Party in Interest pursuant to California Code of Civil Procedure § 128.5 for filing a frivolous motion aimed at causing delay and pursuant to California Rules of Court, Rule 201 for serving papers in improper form (Ref: pp. 537-544 in Volume 2 of 3 of the Supporting Documents). Further, in the said Opposition, the Petitioner asserted that discovery on a party via

Deposition Subpoena for Production of Documents is proper.

7F. A hearing was held on the motion of the Real Party in Interest to quash the Petitioner's Deposition Subpoena on May 26, 1993 and a copy of the Reporter's Transcript of the said Hearing is reproduced in pp. 611-616 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. During the said Hearing, the Petitioner impressed upon the Respondent that some of the Documents requested in the Petitioner's Deposition Subpoena were manifestly relevant to the Petitioner's Original Complaint in this action while the remaining Documents requested in the said Deposition Subpoena were necessitated due to the fact that the Real Party in Interest had obtained those categories of documents pertaining to the Petitioner from all of Petitioner's former employers and, in an **Employment Discrimination Complaint such as that of the Petitioner, the Respondent should allow production of those documents. During the said Hearing, the Respondent acknowledged that it understood the nature of the Petitioner's complaint to be a Discrimination Complaint** (Ref: lines 4-6 in p. 614 in Volume 3

of 3 of the Supporting Documents). And yet, the Respondent denied Petitioner's Request for the production of documents and, the Respondent granted the motion of the Real Party in Interest to quash the Petitioner's Deposition Subpoena and, worse still, the Respondent ordered the Petitioner to pay sanctions in the amount of $750.00 without any justification. **During the said Hearing, the Petitioner requested the Respondent to cite its (i.e., the Respondent's) RATIONALE FOR THE RULING but the Respondent refused to offer any rationale whatsoever** (Ref: lines 2-5 on p. 615 in Volume 3 of 3 of the Supporting Documents).

7G. Following the Court Hearing, a Minute Order was entered by the Respondent a copy of which is reproduced in p. 617 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. It is to be noted that the said Minute Order was made and entered without findings of fact and conclusions of law. Further, the Respondent had abused its discretion by denying discovery of relevant information and there is no substantial basis for the manner in which the trial court discretion was exercised. The Respondent had clearly exceeded the bounds of

reason considering all the circumstances before it and, it had acted arbitrarily, capriciously and without due regard for Petitioner's rights and, the Respondent's action is prejudicial to the Petitioner.

7H. On October 7, 1993, the Real Party in Interest served a motion to dismiss the Petitioner's Complaint alleging that the Petitioner's non-payment of the sanction of $750.00 that the Respondent's order of May 26, 1993 entailed warranted the said dismissal. However, the Respondent did not dismiss the action; rather, the Respondent stayed all further proceedings in this action pending compliance with its order of May 26, 1993 (Ref: p. 215 in Volume 1 of 3 of the Supporting Documents).

7I. Petitioner is a person beneficially interested in the issuance of a peremptory writ of mandate and prohibition by virtue of the fact that she is the plaintiff in the above-described action and an annulment of the Respondent's May 26, 1993 order and concurrent order mandating the Real Party in Interest to produce the documents requested in Petitioner's Deposition Subpoena and imposition of sanctions against the Real Party in Interest would protect Petitioner's legal right

that is clear, present, certain and substantial. Further, the issuance of the said writ would arrest the proceedings of the Respondent which were in clear abuse of discretion.

7J. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law in that an appeal is not a speedy or adequate remedy (i) to avert the expense of proceeding with an unnecessary trial when prospects of settlement would be enhanced once the Real Party in Interest is ordered to produce the documents requested in the Petitioner's Deposition subpoena; (ii) to avert the possibility that the Respondent's order will deprive Petitioner of an opportunity to present a substantial portion of her cause of action; (iii) to avert the likelihood that Petitioner is going to suffer harm or prejudice in a matter that cannot be corrected on appeal; and, (iv) to readily cure the damage done by improperly denying such discovery.

7K. This petition is made to this Court in the first instance because it involves review of orders made by the Superior Court of the State of California, County of Los Angeles, which renders it proper and necessary that the writs issue from an appellate court.

7L. The appellate court can grant these extraordinary writs because the effect of Respondent's actions could not be calculated with reasonable economic certainty so that damage remedy at law is inadequate and, further, no rational bases exist in record that support the Respondent's actions.

8A. On June 28, 1993, Petioner served a Notice of Motion and Motion (i) to Compel Real Party in Interest to Attend Deposition, (ii) to Compel Real Party in Interest to Produce Documents Requested by Petitioner; and (iii) for Award of Monetary Sanctions Against the Real Party in Interest. A copy of the said motion papers is reproduced in pp. 621-714 and 736-743 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. In the said motion, the Petitioner asserted that **the failure of the Real Party in Interest to attend the deposition that was previously noticed by the Petitioner for December 18, 1992 was without substantial justification and that the failure of the Real Party in Interest to produce the documents that were requested by the Petitioner was also without substantial justification.** **INCIDENTALLY, THE SAID DOCUMENT REQUEST OF THE**

PETITIONER WAS A PART AND PARCEL OF THE SAID DEPOSITION NOTICE OF THE PETITIONER (Ref: pp. 634-642 in Volume 3 of 3 of the SUPPORTING DOCUMENTS). AS SUCH, THE 45-DAY TIME LIMIT FOR FILING A MOTION TO COMPEL PRODUCTION OF DOCUMENTS WAS NOT APPLICABLE IN THIS CASE. Further, in the said motion that the Petitioner served on the Real Party in Interest on June 28, 1993, the PETITIONER SOUGHT MONETARY SANCTIONS AGAINST THE REAL PARTY IN INTEREST PURSUANT TO California Code of Civil Procedure §§ 2023(b)(1), 2025(d)(4), 2025(h)(1), 2025(j)(3) and 2025(o) (Ref: lines 7-9 in p. 622 in Volume 3 of 3 of the Supporting Documents). In the separate "Statement of Items in Dispute" that the Petitioner filed and served concurrently with the Petitioner's motion, the Petitioner had shown (i) as to how the information in the documents requested by the Petitioner would tend to prove some issues in the Case; and (ii) as to why such information is necessary for trial preparation or to prevent surprise at trial (Ref: lines 16-27 in p. 627 and pp. 662-714 in Volume 3 of 3 of the Supporting Documents).

8B. On July 7, 1993, the Real Party in Interest served its opposition to Petitioner's

Motion to Compel Deposition and Production of Documents. A copy of the said opposition is reproduced in pp. 744-755 and 770-785 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. **In the said opposition, the Real Party in Interest had misled the Respondent through false statements of fact and law.** For instance, the Real Party in Interest had taken umbrage under California Code of Civil Procedure, § 2031(1) to allege that the Petitioner's motion to compel production of documents was improper (Ref: lines 12-16 in p. 750 in Volume 3 of 3 of the Supporting Documents). The Respondent had relied upon such an erroneous reference to CCP § 2031(1) in its ruling (Ref: p. 790 in Volume 3 of 3 of the Supporting Documents). Whereas, the said statute is inapplicable in the instant Case for the reasons set forth earlier in this Petition.(Ref: Appendix, pp. 127-128). Further, the California Appellate Court's decision in the Crippen v. Superior Court case confirms Petitioner's position that untimeliness of motion is not an issue in this case [Crippen v. Superior Court, 159 Cal.App.3d 254; 205 Cal. Rptr. 477 (Aug. 1984)]. Besides, in its opposition, the Real Party in Interest had sug-

gested that the Petitioner could obtain the information requested in her document production request through depositions (Ref: lines 19-21 in p. 771, lines 13-15 in p. 772, lines 20-22 in p. 773, lines 14-16 in p. 774, lines 8-10 in p. 775, lines 1-3 and 21-23 in p. 776, lines 14-16 in p. 777, lines 8-10 in p. 778, lines 3-5 and 28 in p. 779, lines 1-2 and 25-27 in p. 780, lines 23-25 in p. 781, lines 20-22 in p. 782, and lines 18-20 in p. 783 in Volume 3 of 3 of the Supporting Documents). Accordingly, the Petitioner expended an enormous amount of money by way of taking the oral depositions of the Real Party in Interest (Ref: pp. 50-53 in Volume 1 of 3 of the Supporting Documents). It is not difficult to see that the Petitioner was forced into expending an amount of **$4,549.59** over depositions. And yet, the Petitioner has not been able to obtain some of the information that she was seeking due to the unreasonable objections that the defense counsel, Ms. Diana Denman raised during the said depositions (Ref: (i) Deposition of Ms. Linda Hawley: lines 21-24 in p. 17, lines 7-10 in p. 18, lines 3-7 in p. 28 and lines 11-13 in p. 38; (ii) Deposition of Mr. Raymundo Esquivel: lines 19-22 in p. 32). By now, it should be evident to

the appellate court that the Petitioner had been subjected to a lot of unwarranted annoyance, humiliation, harassment and undue expenditures by the defense counsel, Ms. Diana Denman due to Ms. Denman's uncooperative stance during discovery in this action. In any event, the Harding Lawson Associates v. Superior Court Case is applicable only to those plaintiffs who failed to show a compelling need for particular confidential documents in the files or that the information could not be obtained through other sources. Petitioner certainly does not fall into such a category of plaintiffs (Ref: Appendix, pp. 128-131). [Harding Lawson Associates v. Superior Court, 10 Cal.App.4th 7; -- Cal.Rptr.2d -- (Oct. 1992)]. Further, in the Board of Trustees v. Superior Court Case, the California Appellate Court noted that Labor Code Section 1198.5 provides that

"Every employer shall...upon the request of an employee, permit that employee to inspect such personnel files which are used or have been used to determine that employee's qualifications for employment, promotion, additional compensation, or termination or other disciplinary action...This section...shall not apply to letters of reference"

[Board of Trustees v. Superior Court, 119

Cal.App.3d 516; 174 Cal.Rptr. 160]. Thus, it is not difficult to see that the Real Party in Interest had violated Rule 7-105 of the State Bar Rules of Professional Conduct which states, in part,

"In presenting a matter to a tribunal, a member of the State Bar shall employ, for the purpose of maintaining the causes confided to him such means only as are consistent with truth, and shall not seek to mislead the judge, judicial officer or jury by an artifice or false statement of fact or law. A member of the State Bar shall not intentionally misquote to a judge or judicial officer the language of a book, statute or decision."

8C. On July 14, 1993, a Hearing was held on the Petitioner's Motion to Compel Deposition and Production of Documents and a copy of the Reporter's Transcript of the said Hearing is reproduced in pp. 786-789 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof.

8D. Following the Court Hearing, a Minute Order was entered by the Respondent a copy of which is reproduced in p. 790 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. As mentioned previously, the said order reflects Respondent's failure to apply the proper law to the facts of this

Case. Further, the Respondent had ordered outright denial of discovery rather than imposing partial limitations on discovery, if appropriate. In addition, the Respondent abused its discretion by refusing to enter an order imposing sanctions on the Real Party in Interest pursuant to §§ 2023(b)(1), 2025(d)(4), 2025(h)(1), 2025(j)(3) and 2025(o) of the California Code of Civil Procedure.

8E. Petitioner is entitled to an order of Respondent imposing sanctions on the Real Party in Interest for its willfully engaging in conduct constituting an abuse of the discovery process for the reason that such an order is expressly prescribed by statute as alleged in Paragraph 8D of this petition.

8F. Petitioner is a person beneficially interested in the issuance of a writ by virtue of the fact that she is the plaintiff in the action described in Paragraph 1 of this petition and an annulment of the Respondent's July 14, 1993 order and concurrent order mandating the Real Party in Interest to produce the documents requested in Petitioner's Request for Production of Documents and imposition of sanctions against the Real Party in Interest would protect Petitioner's

legal right that is clear, present, certain and substantial.

8G. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition, because, if sanctions are not imposed on the Real Party in Interest and if discovery is not ordered on the Real Party in Interest, then, the Petitioner will have to proceed to trial of the action described in Paragraph 1 of this petition without information that is in the exclusive knowledge of the Real Party in Interest and essential to the proper prosecution of the action.

8H. This petition is made to this Court in the first instance because it involves review of orders made by the Superior Court of the State of California, County of Los Angeles, which renders it proper and necessary that the writ issue from the appellate court.

8I. The appellate court can grant this extraordinary writ because a writ of mandate is proper to direct the Respondent to apply proper law.

9A. On June 28, 1993, Petitioner served a Notice of Motion and Motion for Contempt

Proceedings Against the Real Party in Interest. A copy of the said motion is reproduced in pp. 715-735 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. In the said motion, the Petitioner asserted that **civil as well as criminal contempt proceedings were warranted against the Real Party in Interest (particularly, against the defense counsel Ms. Diana Denman) in order to protect the rights of the Petitioner and in order to vindicate the dignity or authority of the court.** The said motion was necessitated due to the fact that **Ms. Diana Denman engaged in unlawful practice of law and, she committed direct contempt when she engaged in misconduct designed to misuse the adversary system to obtain an unfair advantage. In the said motion, Petitioner sought sanctions against Ms. Diana Denman pursuant to California Code of Civil Procedure §§ 1209-1222.** Specifically, Ms. Diana Denman's conduct as described in Paragraphs 6F, 6G, 6H, and 6I of this petition constitutes contemptuous behavior by Ms. Denman which warrants sanctions against her.

9B. On July 7, 1993, the Real Party in Interest served its opposition to Petitioner's

Motion for Contempt Proceedings and a copy of the said opposition is reproduced in pp. 756-769 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. As can be seen from the said opposition, **the Real Party in Interest did not at all address the specific allegations of the Petitioner that gave rise to the Petitioner's Motion for Contempt Proceedings against the Real Party in Interest.**

9C. A Hearing was held on the Petitioner's Motion for Contempt Proceedings Against the Real Party in Interest on July 14, 1993 and a copy of the Reporter's Transcript of the said Hearing is reproduced in pp. 786-789 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof.

9D. The Minute Order entered by the Respondent following the Court Hearing is reproduced in p. 790 in Volume 3 of 3 of the Supporting Documents accompanying this petition and made a part hereof. It is to be noted that the said Minute Order was made and entered without findings of fact and conclusions of law. Further, the Respondent had acted arbitrarily, capriciously and without due regard for Petitioner's rights.

9E. The Petitioner's motion for contempt proceedings was directed at the defense counsel, Ms. Diana Denman. And yet, Ms. Denman failed to appear before the Court during the hearing of the said motion on July 14, 1993 without excusable cause.

9F. Ms. Denman's contemptuous behavior is virulent and is continuing in nature and hence, the appellate court needs to come forward and arrest such a behavior. For instance, the Petitioner and the Real Party in Interest were both served the Notice of Arbitration Hearing Date in the action mentioned in Paragraph 1 of this petition (Ref: pp. 799-801 in Volume 3 of 3 of the Supporting Documents). The said arbitration hearing date was September 7, 1993. Accordingly, the discovery cut-off date for this action is August 22, 1993 absent a stipulation to the contrary or a court order. Ms. Denman was fully aware of this fact which is why she filed a motion seeking continuance of the arbitration date on August 9, 1993 (Ref: pp. 231-240 in Volume 1 of 3 of the Supporting Documents). Subsequently, Ms. Denman took the said motion off calendar when she realized that her motion will not be granted in light of Petitioner's opposi-

tion to the said motion (Ref: pp. 241-249 in Volume 1 of 3 of the Supporting Documents). During a hearing on Petitioner's Ex Parte Application For An Order Controlling Deposition Scheduling and Sequencing, the respondent court made a ruling as to the scheduling and sequencing of depositions (Ref: pp. 802-804 in Volume 3 of 3 of the Supporting Documents). However, Ms. Denman did not produce the following six witnesses for depositions as per the respondent court's order: i) Mr. Joe Criscione; ii) Ms. Linda Hawley; iii) Mr. Raymundo Esquivel; iv) Ms. Carole Francis; v) Ms. Karen Koos; and vi) Dr. Pammi Bevli. Hence, Ms. Denman's supervising attorney, Mr. Ric Ottaiano proposed that the Petitioner and the Real Party in Interest stipulate to extend the discovery cut-off in this action to August 27, 1993. Petitioner agreed to the said stipulation (Ref: pp. 805-806 in Volume 3 of 3 of the Supporting Documents). Subsequently, Ms. Denman produced the said six witnesses for depositions on August 25, 1993 (Ref: p. 807 in Volume 3 of 3 of the Supporting Documents). Thus, the mutually agreed upon discovery cut-off date in this action is August 27, 1993. Ms. Denman was fully aware of this and

yet, she had issued a Business Records Subpoena on Pacific Bell -Security, via Compex Systems, Inc., seeking Petitioner's telephone records on August 31, 1993 (Ref: pp. 791-798 in Volume 3 of 3 of the Supporting Documents). While this action is being litigated in the Norwalk Superior Court in the County of Los Angeles, Ms. Denman had fraudulently mentioned the name of the Santa Ana Superior Court in the County of Orange, in the said Deposition Subpoena (Ref: p. 795 in Volume 3 of 3 of the Supporting Documents). However, the Pacific Bell Company refused to honor the said subpoena pursuant to California Code of Civil Procedure §§ 1985.3(f) and 1985.3(k). Subsequently, Ms. Denman withdrew the subpoena that she issued without any legal authority thus committing direct contempt of court.

9G. Petitioner is a person beneficially interested in the issuance of a preemptory writ of mandate by virtue of the fact that she is the plaintiff in the action described in Paragraph 1 of this petition and an annulment of the Respondent's July 14, 1993 order and concurrent order mandating the Respondent to initiate contempt proceedings against Ms. Denman and imposi-

tion of sanctions against Ms. Denman would protect Petitioner's legal right that is clear, present, certain and substantial.

9H. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law other than the relief sought in this petition, because, Petitioner has no statutory right of appeal from the order issued by the respondent court.

9I. This petition is made to this Court in the first instance because it involves review of orders made by the Superior Court of the State of California, County of Los Angeles, which renders it proper and necessary that the writ issue from the appellate court.

9J. The appellate court can grant this extraordinary writ because a writ of mandate is proper to compel the Respondent to entertain contempt proceedings when petitioner has clear right.

10A. On October 7, 1993, the Real Party in Interest served a motion to dismiss the Petitioner's Complaint alleging that the Petitioner's non-payment of the sanctions of $750.00 each that the Respondent's orders of November 13, 1992 and May 26, 1993 entailed war-

ranted the said dismissal. However, the Respondent did not dismiss the action. Rather, the Respondent stayed all further proceedings in this action pending compliance with the said orders (Ref: p. 215 in Volume 1 of 3 of Supporting Documents). The said Stay Order of Respondent was entered on October 25, 1993. Inasmuch as the said stay order is based on the two prior orders of the respondent which are challenged in this petition, it stands to reason that the said stay order be vacated through a peremptory writ of mandate once the said prior orders are also vacated through mandate.

10B. Respondent is clearly proceeding to act on the basis of its prior orders that are voidable in light of arguments presented in Paragraphs 6A through 6O, 7A through 7L, 8A through 8I and 9A through 9J of this petition.

10C. Petitioner is a person beneficially interested in the issuance of a peremptory writ of mandate by virtue of the fact that she is the plaintiff in the action described in Paragraph 1 of this petition and an annulment of the Respondent's stay order of October 25, 1993 and concurrent order mandating the Respondent to hold hearings on Petitioner's pending motions promptly

would protect Petitioner's legal right that is clear, present, certain and substantial.

10D. Petitioner has no plain, speedy, and adequate remedy in the ordinary course of law other than the relief sought in this petition, because, the Respondent's order is clearly erroneous as a matter of law and substantially prejudicial to petitioner's case and the prejudice cannot be corrected on appeal.

10E. This petition is made to this Court in the first instance because it involves review of orders made by the Superior Court of the State of California, County of Los Angeles, which renders it proper and necessary that the writ issue from the appellate court.

10F. The appellate court can grant this extraordinary writ because a writ of mandate is proper to compel Respondent to proceed with action when order has been entered staying proceedings.

WHEREFORE, Petitioner prays:

1. That this court issue a peremptory writ of mandate commanding Respondent to annul its order of October 13, 1993, vacate the arbitration award that was entered in this action on September 14, 1993, tax costs against the Real

Party in Interest in the amount of **$11,000.00** payable forthwith to the Petitioner, and impose sanctions on the defense counsel in this action, Ms. Diana Denman, pursuant to Penal Code § 95.

2. That this court issue a peremptory writ of prohibition commanding Respondent to refrain from enforcing its orders of November 13, 1992 and January 8, 1993, commanding Respondent to strike all parts of the pleadings of the Real Party in Interest for violating the court rules, commanding Respondent to impose penalties on the Real Party in Interest as provided by law, commanding Respondent to order the Real Party in Interest to pay monetary sanctions to the Petitioner, and commanding the Respondent to prohibit the Real Party in Interest from raising or presenting any evidence that the Real Party in Interest had obtained from Petitioner's former employers.

3. That this court issue peremptory writs of mandate and prohibition commanding Respondent to refrain from enforcing its order of May 26, 1993, commanding Respondent to order the Real Party in Interest to produce the documents requested in Petitioner's Deposition Subpoena and, commanding Respondent to impose sanctions

against the Real Party in Interest.

4. That this court issue peremptory writ of mandate commanding Respondent to annul its order of July 14, 1993, commanding Respondent to order Real Party in Interest to produce the documents requested in Petitioner's Request for Production of Documents and commanding Respondent to impose sanctions against the Real Party in Interest.

5. That this court issue peremptory writ of mandate commanding Respondent to annul its order of July 14, 1993 and commanding Respondent to initiate contempt proceedings against the defense counsel, Ms. Diana Denman and commanding Respondent to impose sanctions against Ms. Diana Denman.

6. That this court issue peremptory writ of mandate commanding Respondent to vacate its order of October 25, 1993 and commanding Respondent to hold hearings promptly on Petitioner's motions (Summary Judgment Motion and Motions to Compel Answers to Deposition Questions) that are now pending before the respondent court.

7. For costs of this proceeding in the

amount of **$1,540.00 as of this filing** ($250 for Filing Fee for writ, $500 for xerox copies, $300 for Exhibit Tabs, $60 for Binding charges, $250 for Reporter's Transcripts, $50 for postage, $30 for stationery and supplies and $100 for miscellaneous expenses such as mileage, gas, parking, etc.).

8. For such other and further relief as the court deems just and proper.

DATED: December 31, 1993

V Srinivasan

VATHSALA SRINIVASAN
Petitioner, in pro per

VERIFICATION

I, Vathsala Srinivasan, am the petitioner in the above-entitled proceeding. I have read the foregoing petition and know the contents thereof. The same is true of my own knowledge, except as to those matters that are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

DATE: December 31, 1993
PLACE: Colton, California

V Srinivasan

VATHSALA SRINIVASAN

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRIT OF MANDATE COMMANDING RESPONDENT TO ANNUL ITS ORDER OF 10/13/93, VACATE THE ARBITRATION AWARD ENTERED ON 9/14/93, TAX COSTS AGAINST REAL PARTY IN INTEREST IN THE AMOUNT OF $11,000.00 AND IMPOSE SANCTIONS AGAINST MS. DIANA DENMAN PURSUANT TO PENAL CODE § 95

I. ARBITRATOR IS DISQUALIFIED BY DELAY IN HOLDING THE HEARING AND THE DELAY HAS CAUSED SUBSTANTIAL PREJUDICE TO THE PETITIONER

* "Failure of arbitrator to act within reasonable period is a proper basis for disqualification of arbitrator"

Cathcart v. Security Title Ins. etc. Co. [(1944) 66 Cal.App.2d 469, 474, 475, 152 P2d 336; CRC 1605(b)].

* The said delay has caused substantial prejudice to the petitioner on account of loss of earnings, loss of benefits, loss of seniority, possible loss of witnesses by the time the case moves to trial, deterioration of petitioner's health, and so on.

II. THE ARBITRATION AWARD WAS PROCURED THROUGH UNDUE MEANS

* "If the corruption, fraud, or undue means referred to is that of either the arbitrator or a party involved, vacation of the award under CCP §1286.2(a) is required"

[Pacific Crown Distributors v. Brotherhood of Teamsters(1986) 183 Cal.App.3d 1138, 1146-1147, 228 Cal. Rptr. 645].

* "Any conduct amounting to fraud or resulting in depriving either party of fair and impartial hearing in arbitration proceeding to party's substantial prejudice is ground for setting award aside"

[Stockwell v. Equitable Fire & Marine Ins. Co. of Providence, R.I. (1933) 25 P.2d 873,

134 C.A. 534].

III. RESPONDENT ABUSED ITS DISCRETION IN DENYING PETITIONER'S MOTION TO VACATE THE ARBITRATION AWARD

* "Once discretion is exercised, mandate will lie to remedy an abuse thereof" [State Farm etc. Ins. Co. v. Superior Court, 47 Cal.2d 428, 432, (304 P.2d 13); Hays v. Superior Court, 16 Cal.2d 260, 265 (105 P.2d 975); Gromeeko v. Superior Court, 114 Cal.App.2d 754, 757 (251 P.2d 29); 3 Witkin, Cal.Procedure (1954) Extraordinary Writs, p.2530, 1965 Supp. p.985].

IV. ARBITRATOR FAILED TO FIND ON ALL ISSUES SUBMITTED WHICH CONDUCT SUBSTANTIALLY

PREJUDICED THE RIGHTS OF THE PETITIONER

* At a minimum, the arbitrator is required to read the original complaint in the matter submitted. The said complaint was submitted to the arbitrator in Exhibit A of First Request for Judicial Notice in Support of Motion by Plaintiff for Summary Judgment. Paragraphs 6 and 7 of the said complaint clearly state that the Petitioner was not provided with a written contract of employment when she was hired by the Real Party in Interest on or about January 25, 1991 and hence the Petitioner was deemed to have been employed as a contract employee of the Real Party in Interest pursuant to California Education Code, §87477. The fact that the Petitioner was not provided with a written contract was also available to the arbitrator through

admissible evidence in lines 13-20 in p. 49 of the deposition of Mr. Ron Cataraha. Further, Mr. Ron Cataraha was present at the arbitration hearing and, he did not dispute said fact when the Petitioner mentioned it to the arbitrator. And yet, the arbitrator did not resolve this issue at all in his judgment.

* "Arbitrators are required to decide all issues submitted to them"

[East San Bernardino County Water Dist. v. City of San Bernardino (1973) 33 Cal.App.3d 942, 953-954, 109 Cal. Rptr. 510].

* "Failure of arbitrators to find on all issues submitted to arbitration is proper ground for vacating award"

[Jones v. Kvistad (1971) 19 Cal.App.3d 836, 841, 97 Cal.Rptr. 100; CCP §1286.2(e); CCP §1287; Banks v. Milwaukee Ins. Co. (1966) 247 Cal.App.2d 34, 38-40, 55 Cal.Rptr. 139].

* "The fact of contractual breach does not impair continuing efficacy of arbitration provision; rather arbitration should resolve controversy created by breach"

[Thorup v. Dean Witter Reynolds, Inc. (1986) 180 Cal.App.3d 228, 237, 225 Cal.Rptr. 52].

* "Damages as properly to be included in award even though not expressly submitted as issue, where submitted controversy is breach of contract"

[Grunwald-Marx, Inc. v. L.A. Joint Board (1959) 52 Cal.2d 568, 590, 343 P2d 23].

* "A statutory ground for vacating an arbitrator's award is when the arbitrator fails to find on all issues submitted to arbitration which conduct substantially prejudices the rights of a party"

[CCP §1286.2; Banks v. Milwaukee Ins. Co., 247 Cal.App.2d 34, 38 (55 Cal.Rptr. 139); Ulene v. Murray Millman of California, 175 Cal.App.2d 655, 661 (346 P.2d 494)].

* "Award of arbitrator who fails to

decide all questions submitted is void and entire cause is required to be returned to arbitrator for redetermination"

[M.B. Zaninovich, Inc. v. Teamster Farmworker Local Union 946 (1978) 86 Cal.App.3d 410, 416, 150 Cal.Rptr. 233].

* "When award in arbitration case fails to settle all the issues of the dispute submitted to arbitration, the court may vacate the award and refer the matter back to the arbitrator"

[Lovret v. Seyfarth (1972) 101 Cal.Rptr. 143, 22 C.A.3d 841].

* The arbitrator violated the requirements of CCP §1283.4, requiring an award to include a determination of all questions submitted, and the respondent should have vacated the award and directed further proceedings in accordance with CCP §1287, where the record shows that the arbitrator failed to consider all issues submitted to arbitra-

tion.

* "Fact that the arbitration award was made and entered without findings of fact and conclusions of law may, in itself, constitute cause for reversal"

[A.D. Hoppe Co. v. Fred Katz Const. Co. (1967) 57 Cal.Rptr. 95, 249 C.A.2d 154, 25 A.L.R. 3d 1162].

* "Where arbitrators did not settle definitely the differences between the parties, there was neither statutory nor common law arbitration"

[Boyd v. Bargagliotti (1909) 107 P.150, 12 C.A. 228].

V. ARBITRATOR EXCEEDED HIS POWERS AND THE AWARD CANNOT BE CORRECTED WITHOUT AFFECTING THE MERITS OF THE DECISION ON THE CONTROVERSY SUBMITTED

* Paragraph 11 of Petitioner's original complaint in this action clearly states that beginning in or about the start of the

school year of the Real Party in Interest in 1990, and continuing through the school year of 1990-91, the Real Party in Interest assigned the teaching of mathematics on a contract basis to Raymundo Esquivel and Linda Hawley, neither or whom had ever majored in mathematics in their respective colleges and neither was as qualified to teach mathematics on a full-time basis as was the petitioner (Ref: Paragraph 11 in Exhibit A in First Request for Judicial Notice in Support of Motion by Plaintiff for Summary Judgment). During his deposition on August 25, 1993, Mr. Joseph Criscione testified that Mr. Raymundo Esquivel's master's degree in library science is not reasonably related to his full-time teaching position in mathematics and that Mr. Esquivel did not have the mathe-

matics requirements to teach mathematics full-time (Ref: lines 5-9 on p. 21, lines 8-11 on p. 25, and lines 16-20 on p. 27 of the deposition of Mr. Joseph Criscione). The arbitrator had this evidence available to him. Thus, the illegality of Mr. Raymundo Esquivel's employment contract with the Real Party in Interest should have alerted the arbitrator that the matters ordered arbitrated clearly fell outside the scope of arbitration.

* "If the arbitrators exceed their powers and the award cannot be corrected without affecting the merits of the decision on the controversy submitted, their award may be vacated on that ground"

[CCP §1286.2(d); San Luis Obispo Bay Properties, Inc. v. Pacific Gas & Elec. Co. (1972) 28 Cal.App.3d 556, 564, 104 Cal.Rptr. 733].

* "One type of error of law that will warrant vacating an award is an award based on an illegal contract. The issue of the legality of the underlying agreement is a matter for judicial determination , although an arbitrator may make a preliminary finding that is not binding on the court. Vacating an award based on an illegal contract is required under the general rule that an illegal contract cannot be enforced and a claim arising out of an illegal transaction is not a proper matter for submission to arbitration"

[Loving & Evans v. Blick (1949) 33 Cal.2d 603, 607, 609-610, 204 P.2d 23; All Points Traders, Inc. v. Barrington Associates (1989) 211 Cal.App.3d 723, 736-738, 259 Cal.Rptr. 780].

* "A court can vacate an award when an error of law appears on the face of the award and results in substantial injustice"

[All Points Traders, Inc. v. Barrington Associates (1989) 211 Cal.App.3d 723, 736,

259 Cal.Rptr. 780; National Football League Players' Assn. v. National Football League Management Council (1986) 188 Cal.App.3d 192, 199, 233 Cal. Rptr. 147; Schneider v. Kaiser Foundation Hospitals (1989) 215 Cal.App.3d 1311, 1317, 264 Cal.Rptr. 227; Government Emp. Ins. Co. v. Brunner (1961) 12 Cal.Rptr. 547, 191 C.A.2d 334; Abbott v. California State Auto Assn. (1977) 68 Cal.App.3d 763, 770-771, 137 Cal.Rptr. 580]. In these situations, the award based on an error in law is set aside on the ground that it is in excess of the arbitrator's powers [CCP § 1286.2(d)].

VI. SANCTIONS AGAINST MS. DIANA DENMAN ARE WARRANTED

* Corrupt attempt to influence arbitrator is a criminal offense punishable pursuant to Penal Code §95.

* Sanctions pursuant to CCP §128.5 are warranted against Ms. Denman for frivolous tactics employed during judicial arbitration which were solely intended to cause unnecessary delay.

VII. RELIEF THROUGH EXTRAORDINARY WRITS IS PROPER

* Mandamus is an extraordinary remedy, but it would lie in case where Superior Court abused its discretion [National Union Fire Ins. Co. of Pittsburgh v. Superior Court In and For City and County of San Francisco (1967) 60 Cal.Rptr. 535, 252 C.A.2d 568; Mid-Wilshire Associates v. O'Leary (App. 2 Dist. 1992) 9 Cal.Rptr.2d 862, 7 Cal.App.4th 1450; United Firefighters of Los Angeles v. City of Los Angeles (App. 2 Dist. 1991) 283 Cal.Rptr. 8, 231 Cal.App.3d 1576].

* "Review of an order denying a motion to vacate an arbitration award on substantive grounds may be made by writ of mandate"

[Mid-Wilshire Associates v. O'Leary (App.2 Dist. 1992) 9 Cal.Rptr.2d 862, 7 Cal.App.4th 1450].

* "If matters ordered arbitrated fall clearly outside the scope of arbitration and the arbitration process is unduly time consuming or expensive, relief may be sought by writ of prohibition, prohibiting the court from enforcing its order denying vacation of arbitration award, and by writ of mandate, compelling the trial court to set aside its order denying vacation of arbitration award, and compelling the trial court to exercise its jurisdiction to hear and decide a pending civil action involving the non-arbitrable dispute"

[Lesser Towers, Inc. v. Roscoe-Ajax Constr. Co. (1969) 271 Cal.App.2d 675, 692-693, 77 Cal.Rptr. 100 (dictum); Cook v. Superior

Court (1966) 240 Cal.App.2d 880, 884, 50 Cal.Rptr. 81; Bertero v. Superior Court (1963) 216 Cal.App.2d 213, 222, 30 Cal.Rptr. 719 (peremptory writ of mandate issued); Weiman v. Superior Court (1959) 51 Cal.2d 710, 711-715, 336 P.2d 489].

* "A court of appeal will exercise its original jurisdiction in the first instance to issue a writ of mandate, in order to resolve issues of great public import whose prompt resolution is necessary"

[Aden v. Younger (1976) 57 Cal.App.3d 662, 670, 129 Cal.Rptr. 535].

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRIT OF PROHIBITION COMMANDING RESPONDENT TO REFRAIN FROM ENFORCING ITS ORDERS OF 11/13/92 AND 01/08/93 AND COMMANDING RESPONDENT TO IMPOSE SANCTIONS ON THE

REAL PARTY IN INTEREST

* "Courts permit review of interim orders in discovery cases by extraordinary writ if an order allegedly violates a party's privilege or other protection against disclosure"

[Roberts v. Superior Court (1973) 9 Cal.3d 330, 336, 107 Cal.Rptr. 309, 508 P2d 309; Thomas B. v. Superior Court (1985) 175 Cal. App.3d 255, 260, 220 Cal.Rptr. 577; Hofmann Corp. v. Superior Court (1985) 172 Cal.App.3d 357, 362-363 fn 2, 218 Cal.Rptr. 355].

* "Application by prerogative writ is appropriate in discovery cases when order of the trial court granting discovery constitutes an invasion of the constitutional right of privacy"

[Willis v. Superior Court (1980) 112 Cal.App.3d 277, 289, 169 Cal.Rptr. 301].

* "Writ of prohibition is proper when discovery is improperly ordered"

[Burke v. Superior Court (1969) 71 Cal.2d 276, 277-278 fn 1, 78 Cal.Rptr. 481, 455 P2d 409; Petterson v. Superior Court (1974) 39 Cal.App.3d 267, 269, 114 Cal.Rptr. 20].

* "Since a writ of prohibition lies to restrain the issuance of court orders based on unconstitutional statutes, an appellate court is justified in deciding that an appeal is not a speedy or adequate remedy by which to determine important constitutional issues."

[Mihans v. Municipal Court (1970) 7 Cal. App. 3d 479, 483, 87 Cal. Rptr. 17].

* "It should be noted that a question involved in a prohibition proceeding will not be treated as moot when it is one of continuing importantce to the parties, when the situation is not one in which the parties are no longer interested in the legal issue involved, when no purpose but delay would be served by treating the question as moot, and when the orderly administration of justice compels a determination immediately."

[DiGiorgio Fruit Corp. v. Dept. of Employment (1961) 56 Cal. 2d 54, 58-59, 13 Cal. Rptr. 663, 362 P. 2d 487; Heavy, Highway Bldg. Constr. Teamters Committee v. Superior Court (1962) 203 Cal. App. 2d 591, 597, 21 Cal. Rptr. 840].

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRITS OF MANDATE AND PROHBITION COMMANDING RESPONDENT TO REFRAIN FROM ENFORCING ITS ORDER OF 05/26/93, COMMANDING RESPONDENT TO ORDER THE REAL PARTY IN INTEREST TO PRODUCE THE DOCUMENTS REQUESTED IN PETITIONER'S DEPOSITION SUBPOENA AND COMMANDING RESPONDENT TO IMPOSE SANCTINS AGAINST THE REAL PARTY IN INTEREST

* "Aggrieved party is allowed to bypass appellate process and pursue extraordinary relief if remedy by appeal is inadequate"

[California Trial Lawyers Assn. v. Superior Court (1986) 187 Cal. App. 3d 575, 578-579, 231 Cal. Rptr. 725].

* "Court is not abusing discretion in granting peremptory writ of mandate when effect of party's unlawful action could not be calculated with reasonable economic certainty so that damage remedy at law is inadequate"

[San Joaquin County Employees Assn. v. City of Stockton (1984) 161 Cal. App. 3d 813, 820, 207, Cal. Rptr. 876].

* "Writ of mandate is proper to compel court to vacate discretionary order when no rational basis in record supports decision"

[Lyle v. Superior Court (1981) 122 Cal. App. 3d 470, 479, 175 Cal. Rptr. 918].

* "One of the factors in determining whether or not appeal from a final judgment

is adequate relief is the possibility that the trial court's order will deprive petitioner of an opportunity to present a substantial portion of his or her cause of action"

[Vasquez v. Superior Court (1971) 4 Cal. 3d 800, 806-807, 94 Cal. Rptr. 796, 484 P. 2d 964].

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRIT OF MANDATE COMMANDING RESPONDENT TO ANNUL ITS ORDER OF 07/14/93, COMMANDING RESPONDENT TO ORDER REAL PARTY IN INTEREST TO PRODUCE THE DOCUMENTS REQUESTED IN PETITIONER'S REQUEST FOR PRODUCTION OF DOCUMENTS AND COMMANDING RESPONDENT TO IMPOSE SANCTIONS AGAINST THE REAL PARTY IN INTEREST

* "A clear abuse of discretion by the trial court is demonstrated if there is no

substantial basis for the manner in which the trial court discretion was exercised, or if the trial court applied a patently improper standard of decision."

[Coriell v. Superior Court (1974) 39 Cal. App. 3d 487, 491 fn 1, 114 Cal. Rptr. 310]. In such instances, a prerogative writ will issue.

* "Writ of mandate is proper to require trial court to set aside order denying production and inspection of documents requested and reconsider defendant's objections to specific documents"

[Associated Brewers Distrib. Co. v. Superior Court (1967) 65 Cal 2d 583, 589, 55 Cal. Rptr. 772, 422 P2d 332].

* "A trial court is under a legal duty to apply the proper law, and it may be directed to perform that duty by writ of mandate"

[Hurtado v. Superior Court (1974) 11 Cal. 3d 574, 579, 114 Cal. Rptr. 106, 522 P2d 666; Babb v. Superior Court (1971) 3 Cal.

3d 841, 851, 92 Cal. Rptr. 179, 479 P2d 379].

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRIT OF MANDATE COMMANDING RESPONDENT TO ANNUL ITS ORDER OF 07/14/93 AND COMMANDING RESPONDENT TO INITIATE CONTEMPT PROCEEDINGS AGAINST THE DEFENSE COUNSEL, Ms. DIANA DENMAN AND COMMANDING RESPONDENT TO IMPOSE SANCTIONS AGAINST Ms. DIANA DENMAN

* "Criminal contempt is punitive in nature, and the government, the courts, and the people are interested in the prosecution of criminal contempt proceedings"

[In re Morris (1924) 194 Cal. 63, 67, 227 P. 914].

* "When the penalty is punitive, the unconditional nature of the punishment ren-

ders the relief criminal in nature because the relief cannot undo or remedy what has been done or afford any compensation, and the contemnor cannot shorten the term by promising not to repeat the offense."

[Hicks v. Feiock (1988) 485 U.S. 624, 633, 108 S. Ct. 1423, 99 L. Ed. 2d 721; In re Feiock (1989) 215 Cal. App. 3d 141, 144-145, 263 Cal. Rptr. 437].

* "A direct contempt is committed when an attorney fails to appear before a court without excusable cause at the the appointed date and hour set for the commencement or resumption of judicial proceedings in which he or she is counsel"

[In re Karpf (1970) 10 Cal App3d 355, 363, 88 Cal Rptr 895]. Therefore,

"A direct contempt proceeding is one undertaken to preserve the power of the court"

[Reifler v. Superior Court (1974) 39 Cal App 3d 479, 485, 114 Cal Rptr 356].

* "Abuse of the process or proceedings

of the court"

constitutes a contempt [CCP § 1209(4)]. An abuse of process is the use of legal process for a purpose other than that which it was designed to accomplish.

"The essential elements of abuse of process are an ulterior purpose and a willful act in the use of the process not proper in the regular conduct of the proceeding"

[Weisenburg v. Molina (1976) 58 Cal App3d 478, 489, 129 Cal Rptr 813]. Similarly,

"falsely pretending to act under the authority of an order or process of the court"

constitutes a contempt [CCP §1209(4)]. In addition, a contempt may consist of

"any other unlawful interference with the process or proceedings of a court."

[CCP §1209(8)]

* "Unlawful practice of law is contempt; proceedings as governed by CCP §1209 et seq;"

[Bus. & Prof. Code §6127].

* "Abuse of process as process accomplishing some unlawful end or compelling another to do some collateral thing which he or she could not be compelled legally to do"

[Pimentel v. Houk (1951) 101 Cal App2d 884, 887, 226 P2d 739]. Abuse of process constitutes contempt.

* "Civil contempt proceedings are expressly not within constitutional requirements guaranteeing trial by jury"

[Bridges v. Superior Court (1939) 14 Cal2d 464, 477, 94 P2d 983].

"Accused contemnor has no right to have contempt matter heard before jury"

[In re Morelli (1970) 11 Cal. App.3d 819, 850, 91 Cal. Rptr. 72].

* "Proceeding in indirect contempt is proper process for enforcement or execution of order or judgment which is in nature of temporary restraining order or injunction."

[Vanderstock v. Bank of America (1972) 29 Cal App3d 731, 734, 105 Cal Rptr 699].

* "Where evidence does not justify order by which trial court divests itself of jurisdiction to hear and determine alleged contempt, order is annulled on writ of review."

[Taylor v. Superior Court (1942) 20 Cal2d 244, 246, 125 P2d 1].

* "A court may allow a writ of prohibition when the act to be prohibited is a continuing one and the circumstances are so aggravated as to justify immediate relief. Continuing acts also may be subject to prohibition when, because of delay, there would be consequential damages."

[Melancon v. Superior Court (1954) 42 Cal. 2d 698, 704-705, 268 P.2d 1050].

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRIT OF MANDATE COMMANDING RESPONDENT TO VACATE

ITS ORDER OF 10/25/93 AND COMMANDING RESPONDENT TO HOLD HEARINGS PROMPTLY ON PETITIONER'S MOTIONS PENDING BEFORE THE RESPONDENT COURT

* "The right to relief in a mandate proceeding is determined by facts existing at the time that the petition is filed."

[King v. Martin (1971) 21 Cal. App. 3d 791, 795, 98 Cal. Rptr. 711; Palmer v. Fox (1953) 118 Cal. App. 2d 453, 456, 258 P.2d 30].

* "A writ of mandate "must" issue when a court is proceeding to act on the basis of a void order"

[Greene v. Superior Court (1961) 55 Cal.2d 403, 406, 10 Cal. Rptr. 817, 359 P.2d 249; Thompson v. Superior Court (1962) 206 Cal. App. 2d 702, 710-711, 23 Cal. Rptr. 841].

* "The fact that the trial court's order is clearly erroneous as a matter of law and

substantially prejudicial to petitioner's case would warrant issuance of a writ of mandate"

[Babb v. Superior Court (1971) 3 Cal. 3d 841, 851, 92 Cal. Rptr. 179, 479 P.2d 379].

* "Court entertaining original proceeding for writ of mandate is properly considering all relevant evidence, including facts not existing until after petition for writ was filed."

[Cooke v. Superior Court (1989) 213 Cal. App.3d 401, 407, 261 Cal. Rptr. 706].

* "Writ of mandate is proper to compel court to proceed with action when order has been entered staying proceedings"

[Bailey v. Fosca Oil Co. Ltd (1962) 211 Cal.App. 2d 307, 308, 27 Cal.Rptr. 454].

* "Writ of prohibtion issues when court is proceeding to act on basis of void order."

[Greene v. Superior Court (1961) 55 Cal. 2d 403, 406, 10 Cal. Rptr. 817, 359 P.2d 249].

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AWARD OF COSTS OF THIS PROCEEDING IN FAVOR OF PETITIONER

* "If a court or judge is named as respondent, the award of costs cannot run against it or him if it be found that the proceeding was defended in good faith. This, however, does not preclude an award of costs against an unsuccessful real party in interest"

[Oksner v. Superior Court (1964) 229 Cal. App. 2d 672, 690-691, 40 Cal. Rptr. 621].

* Applicant as capable of recovering damages if judgment given to him or her [CCP §§ 1095, 1105].

POINTS AND AUTHORITIES IN SUPPORT OF PETITION FOR PEREMPTORY WRITS OF MANDATE AND PROHIBITION

* Peremptory writ as capable of being issued if notice given [CCP §§ 1088, 1105].

* Ex Parte granting of petition of writ is permitted [CCP §1107].

* Writs of mandate and prohibition as capable of being made returnable in discretion of court issuing writ [CCP §1108].

* "Court in mandate proceeding is permitted to hear the matter on the papers filed when only a question of law is raised"

[Lotus Car Ltd. v. Municipal Court (1968) 263 Cal. App. 2d 264, 267, 69 Cal. Rptr. 384].

* Factual issues to be resolved by a jury seldom arise in prohibition proceedings, since prohibition primarily involves the legal question of a lack or excess of jurisdiction, not factual questions for resolution by a jury [CCP § 1102].

* "If it appears that the parties adversely affected by the writ have been provided with due notice, the petition and

opposing papers on file adequately address the issues raised by the petition, no factual dispute exists, and additional briefing that would follow issuance of an alternative writ is unnecessary to disposition of the petition, the peremptory writ may be issued in the first instance."

[CCP §§ 1088, 1105; Palma v. U.S. Industrial Fasteners, Inc. (1984) 36 Cal. 3d 171, 178, 180, 203 Cal. Rptr. 626, 681 P. 2d 893]. At least 10 days after Palma notice is provided, the court may issue a peremptory writ without having issued an alternative writ and without having waited for a full-scale return [CCP §§ 1088, 1105].

* Court is authorized to issue peremptory writs of mandate and prohibition if petition presents no triable issue of fact or is based solely on administrative record [CCP §§ 1094, 1105].

* "Peremptory writ of mandate to compel

production of things is proper when full briefing by parties and issuance of alternative writ would only cause further delay" [Watt Indus., Inc. v. Superior Court (1981) 115 Cal. App. 3d 802, 806, 171 Cal. Rptr. 503].

* "In a contempt proceeding under CCP §1209 et seq., the accused contemnor has no right to have the contempt matter heard before a jury"

[In re Morelli (1970) 11 Cal.App.3d 819, 850, 91 Cal. Rptr. 72].

FURTHER LEGAL ARGUMENT

* "Mandate is capable of being substituted for prohibition when warranted by circumstances"

[Babb v. Superior Court (1971) 3 Cal.3d 841, 850, 92 Cal. Rptr. 179, 479, P.2d 379; Powell v. Superior Court (1957) 48 Cal. 2d 704, 705, 312 P.2d 698].

* "Writ of mandate as opposed to writ of

prohibition is proper when writ of prohibition uncalled for but when facts warrant positive relief"

[Williams v. Superior Court (1964) 226 Cal. App. 2d 666, 668, 38 Cal. Rptr. 291; Proctor & Gamble Co. v. Superior Court (1954) 124 Cal. App. 2d 157, 162, 268 P. 2d 199].

* Application of mandate provisions to prohibition proceedings [CCP § 1105].

* "There is no general statutory time limit on the application for writs"

[State of California v. Superior Court (1968) 263 Cal. App. 2d 396, 399, 69 Cal. Rptr. 683].

DATED: December 31, 1993

Respectfully Submitted,

By: V Srinivasan

VATHSALA SRINIVASAN
Petitioner, in pro per

PROOF OF SERVICE ON RESPONDENT (By Mail)
(C.C.P. Section 1013a (3))

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

I am over the age of 18, and I am a party to the within action. My address is 1401 East Santo Antonio Drive, #140, Colton, California 92324.

On January 3, 1994, I served the following documents:

* Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Supporting Documents (Volume 1 of 3) – Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Supporting Documents (Volume 2 of 3) - Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Supporting Documents (Volume 3 of 3) - Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Notice of Lodging Documents and Transcripts of Depositions Submitted in the Proceedings before the arbitrator

by mail on the Respondent by placing true copies thereof in sealed carton, addressed as follows:

Hon. Daniel Solis Pratt
Department "C"
Los Angeles Superior Court
12720 Norwalk Blvd.
Norwalk, California 90650

On January 3, 1994, I sent the said carton by Insured Mail (Article No.: V-565 486 367) from the United States Post Office in Colton, California.

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on January 3, 1994, at Colton, California.

V Srinivasan

Vathsala Srinivasan

PROOF OF SERVICE ON REAL PARTY IN INTEREST (By Mail)
(C.C.P. Section 1013a (3))

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN BERNARDINO)

I am over the age of 18, and I am a party to the within action. My address is 1401 East Santo Antonio Drive, #140, Colton, California 92324.

On January 3, 1994, I served the following documents:

* Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Supporting Documents (Volume 1 of 3) – Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Supporting Documents (Volume 2 of 3) - Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Supporting Documents (Volume 3 of 3) - Petition for Writ of Mandate and Prohibition [CCP §§ 1085, 1086, 1102, & 1103; CRC Rule 56];
* Notice of Lodging Documents and Transcripts of Depositions Submitted in the Proceedings before the arbitrator

by mail on the Real Party in Interest by placing true copies thereof in sealed carton, addressed as follows:

Ric C. Ottaiano, Esq.
LYNBERG & WATKINS
2020 E. First Street, Suite 101
Santa Ana, California 92705

On January 3, 1994, I sent the said carton by Insured Mail (Article No.: V-565 486 368) from the United States Post Office in Colton, California.

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on January 3, 1994, at Colton, California.

V. Srinivasan

Vathsala Srinivasan

Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Colton, California 92324
Telephone: (714) 824-3332

Plaintiff, in pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

VATHSALA SRINIVASAN, Plaintiff, vs. **RIO HONDO COMMUNITY COLLEGE DISTRICT,** Defendant.	Case No.: VC007518 **NOTICE OF MOTION TO QUASH DEFENDANT'S DEPOSITION SUBPOENAS FOR PRODUCTION OF BUSINESS RECORDS, FOR PROTECTIVE ORDER AND FOR AWARD OF MONETARY SANCTION AGAINST DEFENDANT** Date: November 13, 1992 Time: 8:30 a.m. Dept.: "A"

TO DEFENDANT'S ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 8:30 a.m. on November 13, 1992 or as soon thereafter as the matter can be heard, in Department "A" of this

Court, located at 12720 Norwalk Blvd., Norwalk, California, Plaintiff Vathsala Srinivasan will move this Court for an Order as follows: that Defendant's Deposition Subpoenas for Production of Business Records by Plaintiff's former employers need not be honored and that Plaintiff is awarded monetary sanction against Defendant and the Defense Counsel in the amount of **$750.00 payable forthwith**. Said motion will be made upon the ground that there is good cause for the issuance of said order pursuant to CCP §§ 1985.3(g), 1987.1, 1987.2, 2019(b), 2017(c) and 2025(i).

Said motion will be based upon this notice, the points and authorities set forth below, the declaration of Vathsala Srinivasan attached hereto and served and filed herewith, and the complete files and records of this action.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO QUASH DEFENDANT'S DEPOSITION SUBPOENAS FOR PRODUCTION OF BUSINESS RECORDS

SPECIAL NOTICE REQUIRED WHERE "PERSONAL RECORDS" OF A "CONSUMER" ARE SUBPOENAED

Special notice must be given where "personal records" of a "consumer" are sought by subpoena duces tecum served on the custodian of such records; **and the person whose records are being subpoenaed is entitled to a hearing before delivery of such records. [CCP §§ 1985.3, 1987.1].**

PRODUCTION AUTOMATICALLY STAYED

Filing a motion to quash production of "personal records" of a "consumer" automatically excuses the custodian from producing the subpoenaed records until the court rules on the motion. [CCP § 1985.3(g)].

COURT MAY ALTER DATE WHEN BUSINESS RECORDS SUBPOENAED ARE DUE

Where a motion for protective order is pending, the court may stay the deposition until the matter is determined [CCP § 2025(f)]. Such order may be granted on motion of the deponent or any

party [CCP § 2025(f)].

BURDEN ON PARTY SEEKING DISCOVERY DIRECTLY RELEVANT TO ISSUE IN CASE

"The party seeking discovery must show a particularized need for the confidential information sought. The broad "relevancy to the subject matter" standard is not enough here. The court must be convinced that the information is directly relevant to a cause of action or defense."

[Britt v. Sup. ct., (1978) 20 C3d 844, 859-862, 143 CR 695].

"The more "sensitive" the information, the greater the need for discovery must be shown."

[Hoffman Corp. v. Sup. Ct. (Smaystrla)(1985) 172 CA 3d 357, 218 CR 355].

"The party seeking discovery must show specific facts justifying discovery – e.g., why such information is necessary for trial preparation, etc."

[Associated Brewers Dist. Co. v. Sup. Ct. (1967) 65 C2d 583, 55 CR 772].

"Discovery will not be ordered if the information sought is available from other sources or through less intrusive means."

[Britt v. Sup. Ct., supra].

Partial discovery having already been obtained

by the Defendant through its Form Interrogatories served on the Plaintiff, it is abuse of discretion to require further disclosure via the Business Records Subpoenas issued by the Defendant on Plaintiff's former employers.

"The fact that there is no alternative source for the information sought is an important factor in establishing "good cause" for inspection."

[Associated Brewers Dist. Co.v. Sup. Ct., supra].

SCOPE OF PERMISSIBLE DISCOVERY (CCP § 2017(a))

The information sought by the Defendant in its deposition subpoenas for production of business records by Plaintiff's former employers is not (i) "relevant to the subject matter" of the action, and, (ii) it is not admissible or "reasonably calculated to lead to the discovery of admissible evidence".

Even if the information sought is "relevant to the subject matter", the Court in its discretion may restrict the scope of discovery on a finding that the "burden, expense or intrusiveness ... clearly outweighs the likelihood that the information sought will lead to the discovery of admissible evidence".

[CCP § 2017(c)].

Regardless of relevancy considerations, the statute allows courts to cut off discovery which is too expensive or inconvenient, or simply unnecessary.

Expensive deposition proceedings are unnecessary to obtain from a non-party witness the same kind of information that has already been obtained by the Defendant inexpensively from the Plaintiff through Defendant's Form Interrogatories.

Defendant's overly broad requests are a waste of time and, they unnecessarily complicate the litigation.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PROTECTIVE ORDER

PROTECTIVE ORDERS (CCP §§ 2019(b), 2017(c))

The court is authorized to limit discovery through protective orders. Such orders may be granted on motion of any party or other person affected by the discovery sought in order to protect any party or person from

"unwarranted annoyance, embarrassment or oppression, or undue burden and expense".

For example, protective orders re depositions are authorized by CCP § 2025(i).

PRIVILEGES

Any matter protected against disclosure at trial under an evidentiary privilege is generally protected against discovery. This applies to any of the "standard" privileges enumerated in the Evidence Code such as "Official Records" [Ev. C. § 1040].

PROTECTION ABSOLUTE

Where a privilege applies, such as in the case of "Official Records" (Ev. C. § 1040), information is **ABSOLUTELY** protected from disclosure.

"The court cannot "weigh" or "balance" the privilege against the need for the information sought. The privilege itself is a complete bar to discovery. Nor can the Court require disclosure of information claimed to be privileged in order to rule on the claim of privilege."

[Ev. C. § 915(a); Southern Calif. Gas Co. v. Public Utilities Commission (1990) 51 C3d 31, 45,

265 CR 801, 809, fn. 19.]

PRIVACY PROTECTION

"Even highly relevant, non-privileged information may be shielded from discovery if its disclosure would impair a person's "inalienable right of privacy" provided by Calif. Const. Art. 1, §1."

[Britt v. Sup. Ct. (1978) 20 C3d 844, 143 CR 695.

Defendant's need for discovery

"does not open up Plaintiff's "lifetime" medical history. Plaintiff still has privacy rights as to physical and mental conditions unrelated to the claim or injury sued upon."

[Britt v. Sup. Ct. (1978) 20 C3d 844, 864, 143 CR 695, 708.]

Production of documents may involve a greater intrusion on one's privacy than merely answering questions. Hence, higher standards are required for discovery. [Flora Crane Service, Inc. v. Sup. Ct. (1965) 234 CA2d 767, 45 CR 79.]

PERSONNEL RECORDS

"Confidential personnel files at a person's place of employment are within a zone of privacy." [Board of Trustees v. Sup. Ct. (1981) 119 CA3d 516, 174 CR 160.]

Again, the privacy protected may be that of

some third person, rather than that of the employee. For example, the personnel file may contain confidential letters regarding the employee written by outsiders. Disclosure would impair the confidentiality they expected would be accorded to their communications. [Board of Trustees v. Sup. Ct., supra --- outsider's communications to University committee investigating faculty member; Kahn v. Sup. Ct. (Davies)(1987) 188 CA3d 752, 769, 233 CR 662, 673.]

DISCOVERY ORDERS NARROWLY DRAWN

"Constitutional concerns require a strict circumspection of the scope of disclosure."

[Cutter v. Brownbridge (1986) 183 CA3d 836, 843, 228 CR 545, 549.]

BENEFITS VS. BURDENS APPROACH

This recognizes the Court's inherent power to balance the benefits vs. the burdens of the proposed discovery. Courts can simply cut off discovery that has reached the point of diminishing returns; i.e., becoming too time-consuming, too

expensive, etc. for the value of the information likely to be obtained. Or, where "sensitive" information is sought, because the need for discovery is outweighed by the privacy rights of the person to whom the information pertains.

GOOD CAUSE FOR DISCLOSURE

"Before ordering discovery, the Court must find the necessity for disclosure in the interest of justice outweighs the necessity for preserving the confidentiality of the personnel records."

[City of Azusa v. Sup. Ct. (Madrigal) (1987) 191 CA3d 693, 236 CR 621.]

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AWARD OF MONETARY SANCTION AGAINST DEFENDANT

DISCOVERY ABUSES (CCP § 2023(a))

Defendant is persisting, over objection, and without substantial justification, in an attempt to obtain information outside the scope of permissible discovery.

Defendant is using a discovery method so as to cause "unwarranted annoyance, embarrassment or oppression or undue burden and expense".

Defendant is engaging in pure "**fishing expedi-**

tion" and thereby is wasting Plaintiff's time and **judicial time.**

GROUNDS FOR THE MOTIONS

Thus, Defendant's Deposition Subpoenas for Production of Business Records by Plaintiff's former employers are challenged by the Plaintiff for

* Defects in form or content of the subpoena (e.g., inadequate description of requested documents);
* Records sought not within permissible scope of discovery -- i.e., privileged, privacy, and not "relevant to the subject matter";
* Unjustly burdensome or oppressive demands; &
* **"Consumer's" right of privacy in "personal records" (CCP § 1985.3(e)).**

Dated: October 13, 1992

Respectfully Submitted,

By: V Srinivasan

VATHSALA SRINIVASAN
Plaintiff, in pro per

PROOF OF SERVICE
1013A (3) CCP REVISED 5/1/88

STATE OF CALIFORNIA, COUNTY OF

I am employed in the county of , State of California. I am over the age of 18 and am a party to the within action; my address is: 1401 E. Santo Antonio Dr., #140, Colton, CA 92324

On 10/19/1992, I served the foregoing document described as NOTICE OF MOTION TO QUASH DEFENDANT'S DEPOSITION SUBPOENAS FOR PRODUCTION OF BUSINESS RECORDS, FOR PROTECTIVE ORDER AND FOR AWARD OF MONETARY SANCTION AGAINST DEFENDANT by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

Ric C. Ottaiano, Esq.
Diana C. Denman, Esq.
LYNBERG & WATKINS
2020 E. First Street, Suite 101
Santa Ana, CA 92705

BY MAIL: I deposited such envelope in the mail at Colton, California. The envelope was mailed with postage thereon fully prepaid.

Executed on October 19, 1992, at Colton, California.

(State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

V Srinivasan

VATHSALA SRINIVASAN

Vathsala Srinivasan
1401 E. Santo Antonio Dr. #140
Colton, CA 92324
Tel: (714) 824-3332

November 17, 1992

Diana C. Denman, Esq.
LYNBERG & WATKINS
2020 E. First Street
Suite 101
Santa Ana, CA 92705

Sent via facsimile to (714) 973-1002 and by mail

RE: LASC Case No.: VC007518
Vathsala Srinivasan v.
Rio Hondo Community College District

Dear Ms. Denman:

With reference to Plaintiff's Motion to Quash Defendant's Deposition Subpoenas for Production of Business Records from Plaintiff's former employers, please be informed that I am going to appeal the Court's Ruling in the matter pursuant to the hearing that was held on November 13, 1992.

Under the circumstances, you are required to cease all efforts to obtain any of the records in question until such time that the said appeal is decided by the Court.

Sincerely,

V. Srinivasan

Vathsala Srinivasan

cc: COMPEX

APPENDIX M

**********TX REPORT**********

Nov. 17, 1992 11:52AM

RECEIVING FACSIMILE	MODE	PAGES	START TIME	USAGE TIME	RESULT
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Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
Colton, California 92324
Telephone: (909) 824-3332

Plaintiff, in pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

VATHSALA SRINIVASAN,)	Case No.: VC007518
)	
Plaintiff,)	**MOTION FOR**
)	**RECONSIDERATION OF**
vs.)	**PLAINTIFF'S MOTION TO**
)	**QUASH DEFENDANT'S**
RIO HONDO COMMUNITY)	**DEPOSITION SUBPOENAS**
COLLEGE DISTRICT,)	**FOR PRODUCTION OF**
)	**BUSINESS RECORDS, FOR**
Defendant.)	**PROTECTIVE ORDER AND**
_____)	**FOR AWARD OF MONETARY**
	SANCTION AGAINST
	DEFENDANT (CCP § 1008)
	Date: January 8, 1993
	Time: 8:30 a.m.
	Dept.: "A"
	Discovery cut-off Date:
	none
	Motion cut-off Date:
	none

APPENDIX N

TO DEFENDANT'S ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 8:30 a.m. on January 8, 1993 or as soon thereafter as the matter can be heard, in Department "A" of this Court, located at 12720 Norwalk Blvd., Norwalk, California, Plaintiff Vathsala Srinivasan will move this Court for an Order as follows: that Defendant's Deposition Subpoenas for Production of Business Records by Plaintiff's former employers need not be honored and that Plaintiff is awarded monetary sanction against Defendant in the amount of **$1,700.00 payable forthwith**. Said motion will be made upon the ground that different state of facts exist than those before the court at the time of the original ruling. [CCP §1008(a)]

Said motion will be based upon this notice, the points and authorities set forth below, the declaration of Vathsala Srinivasan attached hereto, and the complete files and records of this action.

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR RECONSIDERATION

The following points and authorities are submitted with reference to Plaintiff's earlier-filed "Motion to Quash Defendant's Deposition Subpoenas for Production of Business Records, for Protective Order and for Award of Monetary Sanction against Defendant" executed on October 19, 1992.

Statutory requirements: The losing party may make a motion before the same judge to reconsider the matter. Such motion must be made

"within 10 days after knowledge of the order" and must be based on a "different state of facts than those before the court at the time of the original ruling."

[CCP §1008(a)]

10-day time limit: The 10 days runs from the time the losing party acquires "knowledge of the order." [CCP §1008(a)]

"This term is unique in California statutory law. It means something different than entry of the order, or mere service of the order. There must be actual or at least constructive notice that the order has been made."

[Insurance Commissioner v. Imperial Insurance Co. (1984) 157 CA3d 290, 203 CR 664] At the time when the ruling was made in the Court on November 13, 1992, the Plaintiff did not waive notice.

Notice of Ruling: On November 19, 1992, the Defendant mailed a Notice of Ruling in this matter to the Plaintiff (Ref: Exhibit R) which was received by the Plaintiff on November 21, 1992.

Losing Party must be given opportunity to review: It is customary to give counsel for the losing party an opportunity to approve the form of a proposed order before submission to the judge. Defendant failed to do this. If the order has not been approved as to form by opposing counsel, the cover letter to the court must explain this (and a copy of the letter must be sent to opposing counsel). [S.F. Sup. Ct. L&MM §17(c)]

Form of order: The sanctions order must "recite in detail the conduct or circumstances justifying the order." [CCP §177.5] Specification is required both for due process purposes and to enable the reviewing

court to determine whether there has been an abuse of discretion. [Caldwell v. Samuels Jewelers (1990) 222 CA3d 970, 272 CR 126, 131 – order stating "good cause appears" to impose sanctions held insufficient] CCP §128.5(c) requires that the order be "in writing and ... recite in detail" the sanctionable conduct. Defendant's Notice of Ruling (Exhibit R) is deficient in this regard.

Order imposing sanctions must state reasons:

CCP §128.5 expressly requires that an order imposing sanctions

"recite in detail the conduct or circumstances justifying the order."

This requirement is strictly applied, both for due process' own sake and to ensure that the power conferred by the statute not be abused. Arbitrary imposition of sanctions

"could imperil the independence of the bar and thereby undermine the adversary system."

[Fegles v. Kraft (1985) 168 CA3d 812, 817, 214 CR 380, 382] Defendant's Notice of Ruling (Exhibit R) is deficient in this regard.

Specificity required:

"The written order must provide a factual recital, with reasonable specificity, of the circumstances that led the court to find the conduct sanctionable."

[Lavine v. Hospital of the Good Samaritan (1985) 169 CA3d 1019, 1029, 215 CR 708, 716]

Defendant's Notice of Ruling (Exhibit R) is deficient in this regard.

Insufficient order as ground for reversal:

Several cases hold failure to specify sanctionable conduct constitutes reversible error:

"The insufficiency of the order requires that we reverse it."

[Caldwell v. Samuels Jewelers (1990) 222 CA3d 970, 976, 272 CR 126, 131; Jansen Associates, Inc. v. Codercard, Inc. (1990) 218 CA3d 1166, 1171, 267 CR 517, 519; Lavine v. Hospital of the Good Samaritan, supra, 169 CA3d at 1030, 215 CR at 716]. As such, there is good cause for reversing the Notice of Ruling (Exhibit R).

Knowledge of the order: On Friday the 4th of December, 1992, the Plaintiff picked up from the court the full, true and correct transcript of

the proceedings in Department SE"A" on November 13, 1992, in this cause (Exhibit S). Thus, December 4, 1992 is the date when the Plaintiff had constructive notice in written form pertaining to the order of the court in this matter. Essentially, Judge Hon. James Edson's order is based on the Judge's statement in lines 5 through 7 on page 3 of Exhibit "S", viz.: "I CAN SEE WHAT YOUR PROBLEM IS, BUT SINCE I CAN'T HELP YOU WITH IT ON THE PAPERWORK THAT YOU FILED I DON'T SEE WHAT ELSE I CAN DO." Therefore, the 10-day time limit for the purpose of filing this Motion for Reconsideration runs from December 4, 1992 and hence the filing of the said motion at this time is timely. [CCP §1008(a)].

Different state of facts: In lines 1 through 23 on page 5 of Plaintiff's Response to Defendant Rio Hondo Community College District's Opposition to Plaintiff's Motion to Quash Defendant's Deposition Subpoenas for Production of Business Records, Plaintiff had elaborated on some credibility issues pertaining to some of the informa-

tion that the Defendant Rio Hondo College is trying to obtain from some of Plaintiff's former employers who had failed to appear for the depositions that were noticed by the Plaintiff previously. The said credibility issues were once again elaborated by the Plaintiff during the hearing on the said motion on November 13, 1992 (Ref: line 13 on page 1 through line 20 on page 2 of Exhibit "S"). During the said hearing the Judge Hon. James Edson stated: "THERE'S NOTHING I CAN DO TODAY ABOUT THE PROBLEMS YOU'RE HAVING. YOU'LL HAVE TO MAKE A MOTION TO COMPEL THESE PEOPLE TO BE PRESENT, AND THE COURT WILL MAKE A COURT ORDER IF YOUR PAPER'S IN ORDER AND ORDER THESE PEOPLE TO BE PRESENT. AND IF THEY DO NOT COMPLY OR EVEN IF THEY DO AND ARE RESISTING TOO MUCH, THEY CAN BE FINED, MADE TO PAY FEES." Subsequently, the Plaintiff had filed an Ex-parte Application for an Order Compelling Defendant to Attend Deposition ... with the Federal Court pertaining to Plaintiff's former employer, Rowland Unified School District (Ref: Exhibit "T"). The

Federal Judge Hon. A. Wallace Tashima, who is assigned to hear that case, had issued a Civil Minutes on November 25, 1992 stating that the Magistrate Judge Hon. Eick would determine the appropriate relief in that matter (Ref: Exhibit "T"). In the said civil minutes, Judge Hon. Tashima had indicated that a default judgment against the Rowland Unified School District is a possibility. This state of facts are now being presented to this court which was not available as of November 13, 1992 when the original motion was heard. Likewise, on December 9, 1992, the Plaintiff had filed an Ex-Parte Application for an Order Compelling Defendant to Attend Deposition ... with the Federal Court pertaining to Plaintiff's former employer, DeVry, Inc. (Ref: Exhibit "U"). This state of facts are also now being presented to this Court which was not available as of November 13, 1992 when the original motion was heard.

Thus, in support of this motion for reconsideration, the Plaintiff has provided not only new

evidence, but also a satisfactory explanation for the inability to produce that evidence at the earlier hearing.

Court's inherent power to correct interim rulings:

"Trial courts have inherent jurisdiction to reconsider their interim rulings until those rulings become final by entry of judgment."

[Ziller Electronics Lab GmbH v. Sup. Ct. (Grosh Scenic Studios)(1988) 206 CA3d 1222, 1230, 254 CR 410, 414] Thus,

"if the "ends of justice" are served thereby, the court may modify or set aside an interim order on motion for reconsideration made more than 10 days after notice of the order and in the absence of different facts."

[Lopez v. Larson (1979) 91 CA3d 383, 392-393, 153 CR 912, 916-917]

Responsible discovery: Federal Rules of Civil Procedure Rule 26(g) imposes an affirmative duty on attorneys to utilize discovery in a responsible manner and to avoid discovery abuses. [FRCP 26, Advisory Comm. Notes (1983); Advanced Semiconductor Products, Inc. v. Tan Lab, Inc. (ND CA 1986) 3 FR Serv3d 1389, 1391]

CONCLUSION

Plaintiff Vathsala Srinivasan respectfully requests that this court grant Plaintiff's Motion for Reconsideration of Plaintiff's Motion to Quash, and, further, that reasonable attorney's fees and costs be awarded to Plaintiff Vathsala Srinivasan in the amount of $1,700.00.

DATED: December 11, 1992

Respectfully Submitted,

By: V Srinivasan
VATHSALA SRINIVASAN
Plaintiff, in pro per

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SE-C HON. DANIEL S. PRATT, JUDGE

VATHSALA SRINIVASAN,	)	NO: VC 7518
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RIO HONDO COMMUNITY COLLEGE DISTRICT,	)	
	)	
	)	
Defendants.	)	
	)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

WEDNESDAY, MAY 26, 1993

APPEARANCES:

FOR THE PLAINTIFF: IN PROPRIA PERSONA

FOR THE DEFENDANT: LYNBERG & WATKINS
BY: DIANA C. DENMAN, ESQ.
2020 EAST FIRST STREET
SUITE 101
SANTA ANA, CA 92705

BRIDGET F. GEORGE, CSR #6148
OFFICIAL REPORTER

APPENDIX O

NORWALK, CALIFORNIA; WEDNESDAY, MAY 26, 1993
A.M. SESSION
DEPARTMENT SE-C HON. DANIEL S. PRATT, JUDGE
-000-

THE COURT: NUMBER 13, SRINIVASAN

MS. SRINIVASAN: GOOD MORNING, YOUR HONOR, VATHSALA SRINIVASAN.

MS. DENMAN: DIANA DENMAN ON BEHALF OF THE DEFENDANT.

MS. SRINIVASAN: I WISH TO ARGUE. I WOULD ASK YOU TO ABANDON YOUR TENTATIVE DECISION BECAUSE I HAVE SOME POINTS TO MENTION. FIRST OF ALL, THERE ARE TWO MOTIONS; ONE MOTION IS TO QUASH, THAT ONE IS A MOTION FOR TERMINATING SANCTIONS.

LET ME TAKE THE MOTION TO QUASH FIRST. THERE ARE TWO ISSUES I WANTED TO PRESENT TO YOU, ONE IS -

THE COURT: I DON'T WANT TO ARGUE ON THE TERMINATING SANCTIONS BECAUSE I'VE ALREADY DENIED THAT.

MS. SRINIVASAN: THANK YOU, YOUR HONOR.

THE COURT: JUST ADDRESS THE MOTION TO QUASH.

MS. SRINIVASAN: ONE IS PROCEDURAL ISSUE AND

THE OTHER ONE IS THE MERIT ISSUE. AS FAR AS THE PROCEDURAL ISSUE IS CONCERNED, I HAVE CLEARLY STATED A CASE LAW ON PAGE FOUR OF MY OPPOSITION, WHICH SAYS, IN RESPECT OF A PARTY TO AN ACTION, DOCUMENT PRODUCTION CAN BE OBTAINED THROUGH A SUBPOENA, OR THROUGH A C.C.P. SECTION 2031, DEMAND BUT THESE ARE SEPARATE PROCEDURES.

ABSENT A PROTECTIVE ORDER, THE DEFENDANT NEVER ASKED FOR ANY KIND OF A PROTECTIVE ORDER, ABSENT A PROTECTIVE ORDER NEITHER BARS USE OF THE OTHER, AND THERE IS A CASE LAW TO SUPPORT MY POSITION, CARTER VERSUS SUPERIOR COURT, INTER-INSURANCE BUREAU 1990, SO PROCEDURALLY MY ISSUING A SUBPOENA IS OKAY.

NEXT, LET'S TAKE THE MERIT ISSUE. IF YOU TAKE A LOOK AT THE KIND OF DOCUMENTS THAT I HAVE REQUESTED IN MY SUBPOENA, YOU CAN DIVIDE THEM INTO TWO PARTS; ONE PART CONSISTS OF DOCUMENTS THAT I NEED VERY BADLY IN ORDER TO SUPPORT MY CLAIM. IN MY REQUEST FOR JUDICIAL NOTICE, I HAVE INCLUDED MY ORIGINAL COMPLAINT, AND HALF OF THE DOCUMENTS IN MY DOCUMENT REQUEST ARE NECES-

SARY, BECAUSE THEY ARE RELEVANT TO MY COMPLAINT.

THE OTHER HALF IS NECESSARY DUE TO THE FACT THAT THE DEFENDANT WENT AHEAD AND OBTAINED THOSE VERY SAME DOCUMENTS IN RESPECT OF ME FROM MY FORMER EMPLOYERS, THINGS LIKE ABSENCE RECORDS, MEDICAL RECORDS, AND SO FORTH. SINCE THIS IS A DISCRIMINATION COMPLAINT, IN ORDER FOR THE COURT TO MAKE AN INFORMED DECISION IN THE MATTER, THE COURT NEEDS TO TAKE A LOOK AT MY MEDICAL RECORDS, VERSUS THE OTHER EMPLOYEES' MEDICAL RECORDS.

THE COURT NEEDS TO TAKE A LOOK AT MY ABSENCE RECORDS VERSUS THE OTHER EMPLOYEES ABSENCE RECORDS; THIS IS A DISCRIMINATION COMPLAINT.

THE COURT: I UNDERSTAND THAT.

MS. SRINIVASAN: SO HALF THE NUMBER OF RECORDS IN MY DOCUMENTS REQUEST CAME ABOUT BECAUSE OF THE FACT THAT THE DEFENDANT WENT AHEAD AND OBTAINED THOSE RECORDS PERTAINING TO ME FROM MY FORMER EMPLOYERS, THE OTHER HALF OF THE RECORDS ARE MANIFESTLY RELEVANT TO MY COMPLAINT.

THE COURT: YOU WANT TO RESPOND?

MS. DENMAN: WE WILL SUBMIT ON THE TENTATIVE, YOUR HONOR.

THE COURT: ALL RIGHT. I'LL STAND ON THE TENTATIVE AT THIS TIME AND THAT WILL BE SANCTIONS PAYABLE WITHIN 30 DAYS. PLEASE GIVE NOTICE.

MS. DENMAN: THANK YOU, YOUR HONOR. MAY I ASK FOR A CLARIFICATION FOR THE BENEFIT OF THE PLAINTIFF THAT THE SANCTIONS THAT WERE IMPOSED AGAINST HER IN NOVEMBER ARE STILL DUE AND OWING AT THIS TIME.

THE COURT: THEY ARE STILL DUE AND OWING, I'M NOT OBVIOUSLY GOING TO GIVE TERMINATING SANCTIONS.

MS. SRINIVASAN: IN THE NOTICE OF RULING THEY DID NOT MENTION ANYTHING ABOUT THE SANCTIONS AND THE NOTICE OF RULING IS SUPPOSED TO BE VERY SPECIFIC AND INDICATE -

THE COURT: MA'AM, I'VE MADE MY RULING. OKAY.

MS. SRINIVASAN: I WOULD LIKE TO KNOW YOUR RATIONALE FOR YOUR RULING AT THIS TIME?

THE COURT: MA'AM, I'VE MADE MY RULING. I'M

DONE.

(PROCEEDING CONCLUDED)

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DEPARTMENT SE-C HON. DANIEL S. PRATT, JUDGE

VATHSALA SRINIVASAN,	)	NO: VC 7518
	)	REPORTER'S CERT.
Plaintiff,	)	
	)	
vs.	)	
	)	
RIO HONDO COMMUNITY COLLEGE DISTRICT,	)	
	)	
Defendants.	)	
	)	
STATE OF CALIFORNIA	)	
	)	SS
COUNTY OF LOS ANGELES	)	

I, BRIDGET GEORGE, OFFICIAL REPORTER OF THE SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES, DO HEREBY CERTIFY THAT THE FOREGOING PAGES, 1 THROUGH 5, COMPRISE A FULL, TRUE AND CORRECT TRANSCRIPT OF THE PROCEEDINGS HELD IN THE ABOVE-ENTITLED MATTER ON MAY 26, 1993.

DATED THIS 3RD DAY OF JUNE, 1993.

BRIDGET F. GEORGE, CSR #6148
OFFICIAL REPORTER

§ 10. Same; vacation; grounds; rehearing

In either of the following cases the United States court in and for the district wherein the award was made may make an order vacating the award upon the application of any party to the artibration-

(a) Where the award was procured by corruption, fraud, or undue means.

(b) Where there was evident partiality or corruption in the artibrators, or either of them.

(c) Where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

(e) Where an award is vacated and the time within which the agreement required the award to be made has not expired the court may, in its discretion, direct a rehearing by the arbitrators.

(July 30, 1947, ch 392, § 1, 61 Stat. 672.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

This section is based on Act Feb. 12, 1925, ch 213, § 10, 43 Stat. 885

(§10 of former Title 9).

CROSS REFERENCES

This section referred to in 9 USCS § 9.

RESEARCH GUIDE

Federal Procedure L Ed:

Arbitration, Fed Proc L Ed, §§4:102, 105-113, 119, 120, 125, 127, 177, 178.

Labor and Labor Relations, Fed Proc L Ed, §52:2080.

Am Jur:

5 Am Jur 2d, Arbitration and Award §§97-99, 145, 167, 168, 171,177-179, 181, 184, 185

37 Am Jur 2d, Fraud and Deceit §11.

Forms:

3 Federal Procedural Forms L Ed, Arbitration §§ 4:144, 4:182, 4:185, 4:187, 4:190-4:197.

Annotations:

Construction and application of § 10(a-d) of United States Arbitration Act of 1947 (9 USCS § 10(a-d)), providing grounds for vacating arbitration awards. 20 ALR Fed 295.

CHAPTER 21. CONTEMPTS

Section

401. Power of court
402. Contempts constituting crimes
403. Protection of the privacy of child victims and child witnesses

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Amendments:

1949. Act May 24, 1949, ch 139, § 8(a), (b), 63 Stat. 90, amended the heading of the chapter by striking out the words "CONSTITUTING CRIMES", and amended the analysis of the chapter, in item 402, by substituting "Contempts constituting crimes" for "Criminal contempts". **1990.** Act Nov. 29, 1990, P.L. 101-647, Title II, Subtitle D, § 225(b)(2), 104 Stat. 4805, amended the analysis of this chapter by adding item 403.

Auto-Cite®: Cases and annotations referred to herin can be further researched through the Auto-Cite® computer-assisted research service. Use Auto-Cite to check citations for form, parallel references, prior and later history, and annotation references.

§ 401. Power of Court

A court of the United States shall have power to punish by fine or imprisonment, at its discretion, such contempt of its authority, and none others, as -

(1) Misbehavior of any person in its presence or

so near thereto as to obstruct the administration of justice;

(2) Misbehavior of any of its officers in their official transactions;

(3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.

(June 25, 1948, ch 645, §1, 62 Stat. 701.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

Prior Law and revision:

This section is based on Act March 3, 1911, ch 231, §268, 36 Stat. 1163 (former 28 USC §385).

Former 28 USC § 385 conferred two powers. The first part authorizing courts of the United States to impose and administer oaths is included in former 28 USC § 459. The second part relating to contempt of court constitutes this section.

Changes in phraseology and arrangement were made.

CROSS REFERENCES

Obstruction of justice, 18 USCS § 1501.

Sentencing guidelines, Statutory Index, Sentencing Guidelines for U.S. Courts, 18 USCS Appendix.

Foreign witnesses, 28 USCS § 1784.

Co. (1898, CA8 Neb) 86 F 493.

Scope of similar prohibitory language in predecessor statute was very broad and included all offices within power of judge to give; district judge could not appoint nephew as United States Commissioner. Austill v United States (1923) 58 Ct Cl 232.

Statutory language providing that no person related to any justice or judge of any court of United States shall hereafter be appointed by such court or judge to any office or duty in any court of which such justice or judge may be a member does not prohibit one already appointed from continuing to act and perform duties of his office. Northwestern Mut. L. Ins. Co. v Seaman (1897, CC Neb) 80 F 357, affd on other grounds (CA8 Neb) 86 F 493.

Final decree entered on report of master appointed in violation of statutory prohibition against appointment of one related by affinity or consanguinity is not absolutely void, and court is without power to disturb decree on mere motion. Farmers' Loan & T. Co. v Iowa Water Co. (1897, CC Iowa) 80 F 467.

§ 459. Administration of oaths and acknowledgments

Each justice or judge of the United States may administer oaths and affirmations and take acknowledgments. (June 25, 1948, ch 646, §1, 62 Stat. 908.)

HISTORY;ANCILLARY LAWS AND DIRECTIVES

Prior law and revision:

Based on title 28, USC, 1940 ed., §§264, 385, section 1509 of title 19, USC, 1940 ed., Customs Duties, and section 1114(a) of title 26, USC, 1940 ed., Internal Revenue Code (Mar. 3, 1911, ch. 231, §§ 158, 268, 36 Stat. 1139, 1163; June 17, 1930, ch. 497, title IV, §509, 46 Stat. 733; Feb. 10, 1939, ch. 2, § 1114(a), 53 Stat. 160; Oct. 21, 1942, ch 619, title V, § 504(a), (c), 56 Stat. 957; Feb. 25, 1944, ch. 63, title V, §503, 58 Stat. 72).

Section consolidates provisions of sections 264 and 385 of title 28, USC, 1940 ed., section 1509 of title 19, USC, 1940 ed., and section 1114(a) of title 26, USC, 1940 ed., relating to administration of oaths and acknowledgments by judges and courts.

The provision of section 385 of title 28, USC, 1940 ed., giving to "all courts of the United States" power to impose and administer all necessary oaths is the only part of such section in this title. The remainder is incorporated in section 401 of revised title 18, USC (H.R. 1600, 80th Cong.), Crimes and Criminal Procedure.

Section 264 of title 28, USC, 1940 ed., related only to the Court of Claims and provision of such section relating to clerks and deputies is incorporated in section 953 of this title.

Section 1509 of title 19, USC, 1940 ed., related only to the Customs Court.

Section 1114(a) of title 26, USC, 1940 ed., related only to The Tax Court. That portion of such section authorizing certain employees of The Tax Court to administer oaths and acknowledgments is incorporated in section 953 of this title. For distribution of other provisions thereof, see Distribution Table.

The revised section clarifies what was apparently a statutory omission in that no provision was made with reference to the Court of Customs and Patent Appeals, the judges of which now will have the same pwer respecting administering oaths as judges of other courts.

Supreme Court, U.S.
FILED
AUG 24 1994
OFFICE OF THE CLERK

(2)

No.: 94-165

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA
OCTOBER TERM, 1993

VATHSALA SRINIVASAN,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
LOS ANGELES COUNTY, SOUTHEAST DISTRICT (NORWALK),

Respondent.

RIO HONDO COMMUNITY COLLEGE DISTRICT,
Real Party In Interest.

BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

OPPOSITION OF REAL PARTY IN INTEREST

NORMAN J. WATKINS, ESQ. BAR NO. 87327
LYNBERG & WATKINS
A Professional Corporation
2020 East First Street, Suite 101
Santa Ana, California 92705
(714) 973-1220
Attorneys for Defendant/Real Party in Interest, RIO HONDO COMMUNITY COLLEGE DISTRICT

BEST AVAILABLE COPY

45pp

QUESTIONS PRESENTED:

Rio Hondo Community College District (hereinafter "Rio Hondo"), real party in interest in this action, asserts that, no reviewable question has been presented by the Petitioner. Rio Hondo responds to the Petitioner's specific allegations as follows:

1. Petitioner claims that the provisions of 9 U.S.C.S. § 10(a-d), F.R.C.P., Rule 60(b) and various Supreme Court (hereinafter "Superior Court") rulings apply to vacate the California Superior Court order of October 13, 1993, denying Petitioner's Motion to Vacate the Arbitration Award and Motion to Tax Costs against defendant. Petitioner does not explain how Federal Rules of Procedure governing relief from judgments or orders in federal district courts is applicable

to her Motion, brought in Superior Court. Moreover, Petitioner does not refer to any California statute that is repugnant to the Constitution, treaties, or laws of the United States. Finally, pursuant to California Code of Civil Procedure, § 1141.20 and California Rules of Court, § 1616, an arbitration award is nullified by any party's request for a trial de novo. Petitioner, did, in fact, file a request for trial de novo, thus the arbitration award entered in favor of Rio Hondo, has been vacated and accordingly, the issue is moot.

2. Petitioner suggests that the provisions of Amendment IV, Section 1 and Amendment XIV, Section I of the United States Constitution and various Supreme Court holdings somehow apply to the issues presented herein. It is

impossible, based on a careful review of the Petitioner's Petition for Writ of Certiorari to comprehend how the Fourth Amendment to the Constitution, made applicable to the state of California by the Fourteenth Amendment, somehow applies to a California Superior Court ruling denying Petitioner's Motion to Quash Deposition Subpoenas. Petitioner entirely misapprehends the application of this Constitutional Amendment protecting citizens from unreasonable search and seizure.

3. The Petitioner's claim that the Fourteenth Amendment to the United States Constitution applies to the Superior Court's granting of Rio Hondo's Motion to Quash deposition subpoenas and the Superior Court's order denying Rio Hondo's Motion for Order Terminating

Sanctions is utterly incomprehensible and no reasoned response is possible.

4. Even more confusing is the Petitioner's contention that 18 U.S.C.S. § 401 and 28 U.S.C.S. § 459, Federal statutes governing the authority of the United States District Courts to punish by fine or imprisonment, contempt of its authority and a federal statute granting each justice or judge of the United States the authority to administer oaths and affirmations and to take acknowledgements, together with a number of this Court's rulings, somehow apply to the Superior Court's denial of Petitioner's Motion to Compel Documents, for Contempt and Sanctions. In any event, inasmuch as the Superior Court denied Petitioner's Motion for Contempt, no reviewable judgement or order was ever

entered.

5. The Petitioner claims that the provisions of the Fourth and Fourteenth amendment of the United States Constitution and a number of this court's rulings apply to the Superior Court's order staying Rio Hondo's Motion for Terminating Sanctions. Once again, Petitioner does not and cannot explain how the provisions of these Constitutional Amendments apply to the Superior Court's order.

6. The Petitioner claims that she may be entitled to costs. However, Rule 43 of the Supreme Court of the United States allows costs only when "a judgment or decree is affirmed, reversed, or vacated by this court." Rules of the Supreme Court, Rule 43(2). The Petition does not seek reversal, vacation, or

affirmation of a judgment or decree, only that her Petition for Writ of Certiorari be granted. Accordingly, the issue of costs is not properly presented at this time.

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No.: 94-165

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA
OCTOBER TERM, 1993

VATHSALA SRINIVASAN,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA,
LOS ANGELES COUNTY, SOUTHEAST DISTRICT (NORWALK),

Respondent.

RIO HONDO COMMUNITY COLLEGE DISTRICT,
Real Party In Interest.

BRIEF IN OPPOSITION OF REAL PARTY IN INTEREST TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, SECOND APPELLATE DISTRICT

OPPOSITION OF REAL PARTY IN INTEREST

NORMAN J. WATKINS, ESQ. BAR NO. 87327
LYNBERG & WATKINS
A Professional Corporation
2020 East First Street, Suite 101
Santa Ana, California 92705
(714) 973-1220
Attorneys for Defendant/Real Party in Interest, RIO HONDO COMMUNITY COLLEGE DISTRICT

Real Party in Interest, Rio Hondo Community College District, ("Rio Hondo") respectfully submits its opposition to Petitioner, Vathsala Srinivasan's Petition for Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District.

JURISDICTION:

As set forth more fully below, this Court lacks jurisdiction over this matter and must deny the instant Petition because:

(1) The Petitioner has not presented any federal question pursuant to 28 U.S.C.A. § 1257(a) either in her Petition before this court, her Petition for Review before the Supreme Court of California, her Petition for Writ of Mandate before the Court of Appeal for the Second Appellate District, or before

the Superior Court of the State of California;

(2) The California state court rulings that are the subject of the instant Petition do not constitute final judgments or decrees as required by 28 U.C.C.A. § 1257(a);

(3) The Petitioner failed to timely raise the issues set forth in her petition before the Court of Appeal of the State of California; and

(4) No case or controversy pursuant to Article III of the United States Constitution exists with respect to the Superior Court's denial of the Petitioner's Motion to Vacate the arbitration award.

STATEMENT OF THE CASE:

The underlying action was brought by the Petitioner against her former

employer, Rio Hondo. The Petitioner alleged that Rio Hondo discriminated against her based upon her national origin (East Indian) when she failed to secure a full-time, tenured-track mathematics instructor position with the college.

The matter was ordered into non-binding court ordered arbitration under California Code of Civil Procedure, § 1141.10 on May 12, 1993. The arbitration in this matter was conducted on September 7, 1993. The arbitrator filed an arbitration award in favor of Rio Hondo and against the plaintiff on September 14, 1993.

In response, the Petitioner brought a motion to vacate the arbitration award and to tax costs against Rio Hondo. The hearing on Petitioner's motion was held

on October 13, 1993 at which time the Honorable Daniel S. Pratt denied Petitioner's motion ruling that Petitioner had failed to, "demonstrate either that the (1) arbitration was procured by corruption or fraud; or that, (2) her rights were prejudiced by any delay in scheduling the arbitration hearing." However, the Petition filed a timely request for trial de novo thereby annulling the arbitration award.

On October 19, 1992, the Petitioner then brought a Motion to Quash defendant's deposition subpoenas for the production of business records, for a protective order, and for an award of monetary sanctions against defendant. The motion was denied by the Honorable James E. Edson and the Petitioner was ordered to pay Rio Hondo the sum of

$750.00 in sanctions. Petitioner's subsequent motion for reconsideration was denied on January 8, 1993. (The Petitioner, on page 9 of her Petition for Writ of Certiorari incorrectly states that the denial of her motion for reconsideration was on January 8, 1994).

On May 26, 1993, Rio Hondo's Motion to Quash the Petitioner's deposition for production of business records and request for monetary sanctions was granted by Judge Daniel S. Pratt. Petitioner was instructed to pay Rio Hondo $750.00 within thirty days of the notice of ruling. The Petitioner, as yet, has failed to obey either sanction order and the total of $1,500.00 in sanctions remains outstanding.

On June 28, 1993, the Petitioner brought a motion for contempt proceedings

against the defendant and defense counsel. The Petitioner also sought to compel the defendant's attendance at a deposition to compel production of documents, and an award of monetary sanctions. On July 14, 1993, Judge Daniel S. Pratt denied the Petitioner's motions for contempt, to compel documents, and for sanctions.

On October 7, 1993, Rio Hondo brought a motion to dismiss the Petitioner's complaint on the grounds that the Petitioner wilfully and deliberately violated a court sanction order by refusing to pay the total of $1,500.00 to Rio Hondo pursuant to the court's orders of November 13, 1992 and May 22, 1993. The motion to dismiss, brought pursuant to California Code of Civil Procedure, § 583.150, was denied.

However, the action was stayed pending the Petitioner's compliance with the court's sanction orders.

Subsequently, on December 31, 1993, the Petitioner brought a Petition for Writ of Mandate and Prohibition before the Court of Appeal of the State of California, Second Appellate District. The Petitioner sought a preemptory Writ of Mandate and Prohibition commanding the Superior Court to do the following:

> *(1) Annul its order of October 13, 1993, and vacate the arbitration award entered against the Petitioner on September 14,, 1993; (2) Commanding respondent Superior Court to refrain from enforcing its orders of November 13, 1992 and January 8, 1993 denying Petitioner's Motion to Quash deposition subpoenas for production of*

business records and for sanctions; (3) Command respondents Superior Court to refrain from enforcing its order of May 26, 1993 granting Rio Hondo's Motion to Quash and awarding sanctions in the amount of $750.00 in favor of Rio Hondo and against Petitioner; (4) Commanding respondent Superior Court to annul its order of July 14, 1993 denying Petitioner's Motion for Contempt, to compel depositions, and for sanctions; and commanding respondent Superior Court to vacate its order of October 25, 1993 staying this action pending the Petitioner's payment of sanctions.

The Petition for Writ of Mandate and Prohibition was untimely in that the Petition was brought in violation of the sixty day rule, which requires that a

Petition seeking extraordinary relief be filed a soon as possible, but no later than sixty days after entry of the order from which review is sought absent a showing of extraordinary circumstances. Popelka, Allard, McCowan & Jones v. Superior Court, (1980) 107 Cal.App.3d 496, 499. Petitioner set forth no extraordinary circumstances or good cause to justify the late filing of her Petition. Id. at 499.

Nevertheless, the Petition was filed and summarily denied on January 6, 1994 by the Court of Appeal of the State of California, Second Appellate District. Thereafter, on January 18, 1994, Petitioner filed a Petition for Review before the Supreme Court of the State of California. On March 17, 1994, the Petitioner's Petition for Review was also

denied.

The Petitioner now brings the instant Petition for Writ of Certiorari to review the California Supreme Court and Court of Appeal's denial of her Petition for Review and Writ of Mandate, respectively.

SUMMARY OF ARGUMENT:

The instant Petition must be denied for the following reasons:

1. This court lacks jurisdiction over this matter pursuant to 28 U.S.C.A. § 1257(a) as no federal question has been decided by any of the lower courts in the state of California. The issues passed on by the Superior Court, Court of Appeal, and Supreme Court involved interpretations of state discovery law, contempt proceedings and arbitration conduct; no federal question was

implicated. In fact, the Petitioner refers to federal statutes and Constitutional issues for the first time in the instant Petition. The California courts in this case have never had the opportunity to consider federal questions, much less dispose of them in a way that is repugnant to the Constitution, treaties, or laws of the United States, conflicts with the decision of another state court of last resort or of United States Court of Appeals or implicates any title, right, or privilege, or immunity that is specially set up or claimed under the Constitution.

2. The California State Court decisions in question do not constitute final judgments or orders as required by 28 U.S.C. § 1257(a). Petitioner seeks

review of various interlocutory orders concerning court ordered arbitration proceedings, discovery matters, contempt rulings, and sanctions orders. None of these rulings represent a final judgment or decree.

3. The issues presented by Petitioner were not raised in a timely fashion before the appellate courts of the State of California and thus may not be raised before this court. The Petitioner failed to Petition the California Court of Appeal for a writ of mandate concerning the court rulings of November 13, 1992, January 8, 1993, May 26, 1993, July 14, 1993, October 13, 1993, and October 25, 1993 within sixty days after entry of the order from which review was sought, as required by state law.

4. Pursuant to Article III of the United States Constitution, this Court may only exercise its jurisdiction over an existing case or controversy. The Superior Court's denial of the Petitioner's motion to vacate the arbitration award was rendered moot when the Petitioner filed a request for trial de novo. Pursuant to the California Code of Civil Procedure, 1141.20 court ordered arbitrations are non-binding and may be nullified by the filing of a request for trial de novo. In this case, the Petitioner filed a timely request for trial de novo, thereby negating the arbitration award. Accordingly, no case or controversy exists with respect to this issue and the court may not exercise its jurisdiction.

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REASONS FOR DENYING THE INSTANT PETITION:

I.

THE STATE COURT RULINGS THAT THE PETITIONER PRESENTS FOR REVIEW DO NOT INVOLVE ANY FEDERAL QUESTIONS.

28 U.S.C.A. § 1257(a), the federal statute which permits this Court to review state court decisions, provides that:

> "*Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn*

in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States."

The considerations governing review on Writ of Certiorari have been expressed in Rule 10.1(b) and (c) of the Rules of the Supreme Court of the United States as follows:

"A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for writ of certiorari will be granted only when there are special and important reasons therefor. The following, while

neither controlling or fully measuring the Court's discretion, indicate the character of reasons that will be considered:...(b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals. (c) When a state court or United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decisions of this Court."

The principle purpose for which United States Supreme Court uses certiorari jurisdiction is to resolve conflicts among circuit courts of appeals

and state courts concerning the meaning of provisions of federal law. Braxton v. U.S., 500 U.S. 344,347, 111 S.Ct. 1854, 114 L.Ed. 2d 385 (1991). Only final judgments bearing upon important issues of federal law provide the basis for the appellate jurisdiction of the United States Supreme Court with respect to state court cases. New York Times Co. v. Jascalevich, M.J., 439 U.S. 1317, 1318, 99 S.Ct.6, 8, 58 L.Ed. 2d 25, reapplication denied, 439 U.S. 1331, 99 S.Ct.11, 58 L.Ed. 2d 38 (1978).

Therefore, the critical issue in this Court's determination of the instant Petition for Writ of Certiorari is the presence in the record of an important federal question which has been decided by the California Supreme Court.

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Petitioner erroneously attempts to assert that the aforementioned state court rulings on discovery matters, contempt proceedings and arbitration conduct, decided solely under state law, somehow implicate important federal questions that conflict with the decision of another state court of last resort, United States Court of Appeals, and/or the United States Supreme Court.

However, no federal question has been decided by any of the state courts in this case. Indeed, at no time prior to the instant Petition for Writ of Certiorari, did Petitioner contend that any federal statute or federal constitutional question was at issue. The issues litigated before the California Superior Court, Court of Appeal and Supreme Court, arose purely

from California state law, with no connection with any important federal question.

Furthermore, the Petitioner advances no cogent argument to suggest that the rulings made by the various California state courts conflict with any other state court of last resort, United States Court of Appeals, or this Court. In fact, the Petitioner advances no actual argument at all. She merely recites the holding of a number of cases decided by this Court and several United States Courts of Appeal without interpretation or analysis. The instant Petition is meritless, incomprehensible and should be disregarded in its entirety.

Finally, the Petitioner has failed to set forth in her Statement of the Case any reference as to when and in what

manner federal questions were presented and/or passed upon in the California Superior Court, Court of Appeal, and Supreme Court as required by U.S. Sup.Ct Rule 14.1(h), 28 U.S.C.A.:

> *"If review of a judgment of a state court is sought, the statement of the case shall also specify the stage in the proceedings, both in the court of first instance and in the appellate courts, at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts; and such pertinent quotation of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears*

(e.g., ruling on exception, portion of court's charge and exception thereto, assignment of errors) as will show that the federal question was timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari...."

Because no federal question was raised at any time prior to the instant Petition, plaintiff did not and could not set forth such facts in her statement of the case. Therefore, because no federal question is presented by the Petitioner, this Court has no jurisdiction to grant the instant Petition.

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II.

THE CALIFORNIA SUPERIOR COURT'S RULINGS ARE NOT FINAL JUDGMENTS OR ORDERS AND MAY NOT BE REVIEWED BY THIS COURT.

Consistent with 28 U.S.C.A. § 1257, this Court's jurisdiction to review a state court decision is generally limited to a final judgment rendered by the highest court of the state in which decisions may be had. Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 476-477, 95 S.Ct. 1029, 1036, 43 L.Ed. 2d 328 (1975). In general, the final judgment rule has been interpreted, "to preclude reviewability...where anything further remains to be determined by a State

court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945); Flynt v. Ohio, 451 U.S. 619, 620, 101 S.Ct. 1958, 1959, 68 L.Ed.2d 489 (1981).

An important purpose of the requirement that the United States Supreme Court review only final judgments of a states highest available court is to prevent its interference with state proceedings when the underlying dispute may otherwise be resolved. Costarelli v. Massachussets, 421 U.S. 193, 197, 95 S.Ct. 1534, 1536, 44 L.Ed.2d 76 (1975).

In North Dakota St. Bd. of Pharm. v. Snyder's Drug Stores, Inc., 414 U.S. 156, 159, 94 S.Ct.407, 410, 38 L.Ed.2d 379

(1973). This Court held that:

> *"The finality requirement of 28 U.S.C. § 1257, which limits our review of state court judgments, serves several ends: (1) it avoids piecemeal review of state court decisions; (2) it avoids giving advisory opinions in cases where there may be no real 'case' or 'controversy' in the sense of Art. III; (3) it limits review of state court determinations of federal constitutional issues to leave at a minimum federal intrusion in state affairs."*

In the instant Petition, Petitioner seeks review of interlocutory discovery, non-binding arbitration and sanction rulings rendered by the Superior Court. Because none of these orders represent final judgments, this Court has no jurisdiction to grant review of the

instant Petition.

It must be noted that this Court has held that a state Supreme Court's final disposition of a Writ of Prohibition is considered a final judgment for purposes of 28 U.S.C.A. § 1257(a). Madruga v. Superior Court of California, in and for the County of San Diego, 346 U.S. 556, 557, 74 S.Ct.298, 299, 98 L.Ed.290 (1954). Therefore, it would seem that the Court of Appeal's denial of the Petitioner's Writ of Prohibition may constitute a reviewable final judgment.

However, in this case, unlike Madruga, the California Supreme Court declined to review the Court of Appeal's denial of the Petitioner's Petition for Writ of Mandate and Writ of Prohibition and made no substantive disposition of any issue presented therein.

Additionally, as set forth more fully below Section III of Petitioner's Writ of Mandate and Prohibition was not timely filed and thus not properly presented before either the Court of Appeal or the Supreme Court of the State of California. Under these circumstances, Rio Hondo asserts that no final judgment or decree is presented in the instant Petition.

Finally, while an order holding an individual in civil contempt may be reviewed as a final judgment, (See New York Times Co. v. Jascalevich, 439 U.S. 1317, 1319, 99 S.Ct.8, 58 L.Ed.25 (1978)), the California Superior Court's denial of the Petitioner's Motion for Contempt does not constitute a judgment in any sense and may not be reviewed by this court.

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III.

THE ISSUES PRESENTED BY PETITIONER WERE NOT TIMELY RAISED IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA.

A Petitioner's failure to use proper channels of review is a sufficient basis to deny a Petition for Writ of Certiorari. Hammerstein v. Superior Court of Cal., (1951), 341 U.S. 491, 492, 71 S.Ct. 820, 821, 95 L.Ed. 1135, rehearing denied, 342 U.S. 843, 72 S.Ct. 21, 96 L.Ed. 637 (1951).

The Petitioner failed to timely raise any of the issues presented in her Petition for Writ of Certiorari before the Court of Appeal of the State of California, Second Appellate District.

Specifically, Petitioner filed her Petition for Writ of Mandate on January 3, 1994. The Superior Court rulings that were the subject of her Petition for Writ of Mandate and Prohibition occurred on November 13, 1992, January 8, 1993, May 26, 1993, July 14, 1993, October 13, 1993, and October 25, 1993. Each ruling was beyond the mandatory sixty day rule, which requires that a Petition seeking extraordinary relief be filed no later than sixty days after entry of the order from which review is sought. Popelka, 107 Cal.App.3d at 499. Accordingly, the instant Petition must be denied.

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IV.

THE CALIFORNIA SUPERIOR COURT'S DENIAL OF THE PETITIONER'S "MOTION TO VACATE THE ARBITRATION" WAS RENDERED MOOT WHEN THE PETITIONER WAS GRANTED A TRIAL DE NOVO.

This court lacks jurisdiction to review moot cases pursuant to the requirements of Article III of the Constitution under which the exercise of judicial power depends upon the existence of a case or controversy. Liner v. Jafco, Inc., 375 U.S. 301, 306 fn.3, 84 S.Ct.391, 394, fn.3, 111 L.Ed.2d 347 (1964). In its determination of

mootness, this court must consider whether its decision on the merits, "cannot affect the rights of the litigants in the case before it." St. Pierre v. United States, 319 U.S. 41, 42, 63 S.Ct. 910, 911, 87 L.Ed.1199 (1943).

The Petitioner, by filing her request for trial de novo has rendered the issue of the Superior Court's order denying Petitioner's Motion to Vacate the arbitration moot. Pursuant to California Code of Civil Procedure, § 1141.20 and California Rules of Court, Rule 1616(c), the filing of a request for trial de novo will cause the case to be tried as though no arbitration proceedings had occurred.

The Petitioner's filing of a request for trial de novo has effectively vacated the arbitration award. Therefore the Superior court's ruling on Petitioner's

Motion to Vacate the Arbitration Award has no present effect and therefore this Court's review could not affect the rights of the litigants in this action. Accordingly, this Court lacks jurisdiction to review the Superior Court's denial of the Petitioner's Motion to Vacate the Arbitration Award as the issue has been rendered moot.

CONCLUSION:

Based on the foregoing, respondent respectfully requests that the instant Petition for Writ of Certiorari be denied.

DATED: August 22, 1994

Respectfully submitted,

BY: _____

NORMAN J. WATKINS
LYNBERG & WATKINS
Attorneys for Real Party in Interest
RIO HONDO COMMUNITY COLLEGE DISTRICT

Srinivasan v. Rio Hondo C.C.D.

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of eighteen and not a party to the within action; my business is 2020 East First Street, Suite 101, Santa Ana, California 92705-4015.

On **August 22, 1994** I served the foregoing document described as **BRIEF IN OPPOSITION** on the interested parties in this action

____ by placing the true copies thereof enclosed in sealed envelopes addressed as stated on the attached mailing list.

__XX__ by placing __XX__ the original __XX__ and true copies thereof enclosed in sealed envelopes addressed as follows:

SEE ATTACHED SERVICE LIST.

__XX__ BY MAIL: I deposited such envelope in the mail at Santa Ana, California.

____ BY FACSIMILE TRANSMISSION: The facsimile machine I used complied with California Rules of Court

2003(3) and no error was reported by the machine. Pursuant to rule 2005(i), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this proof of service. (909) 824-3332 **(TO CALIFORNIA SUPREME COURT ONLY)**

____ BY PERSONAL SERVICE I delivered such envelope by hand to the offices of the addressee.

__XX__ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **August 22, 1994** at Santa Ana, California.

Laura A. Lippeatt

Laura A. Lippeatt

(3)

Supreme Court, U.S.
FILED
SEP 13 1994
OFFICE OF THE CLERK

No.: 94-165

IN THE SUPREME COURT
OF THE
UNITED STATES OF AMERICA
OCTOBER TERM, 1993

VATHSALA SRINIVASAN,
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RESPONDENT

RIO HONDO COMMUNITY COLLEGE DISTRICT,
REAL PARTY IN INTEREST

PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA,

SECOND APPELLATE DISTRICT

REPLY TO BRIEF IN OPPOSITION

Vathsala Srinivasan
1401 East Santo Antonio Drive, #140
P.O. Box 430
Colton, California 92324

Telephone: (909) 824-3332

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No.: 94-165

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PETITION FOR WRIT OF CERTIORARI

TO THE COURT OF APPEAL OF THE

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REPLY TO BRIEF IN OPPOSITION

Petitioner, Vathsala Srinivasan, respectfully submits her Reply to Brief in Opposition filed by Real Party in Interest, Rio Hondo Community College District ("Rio Hondo").

I. PETITIONER'S PETITION FOR WRIT OF CERTIORARI COMPLIES FULLY WITH RULE 14 OF THE SUPREME COURT OF THE UNITED STATES

(Ref: Brief in Opposition, pp. 19-21; Petition for Writ of Certiorari, pp. (i)-(iii) & 5-10).

* Rule 14 of the Rules of the United States Supreme Court states, inter alia:

> .1. "The petition for a writ of certiorari shall contain, ... (a) The questions presented for review, expressed in the terms and circumstances of the case, but **without unnecessary detail. The questions should be short and concise and should not be argumentative or repetitious.** ... (f) The constitutional provisions, treaties, statutes, ordinances, and regulations involved in the case, setting them out verbatim, and giving the appropriate citation therefor. **If the provisions involved are lengthy, their citation alone will suffice at this point and their pertinent text must be set forth in the appendix referred to in subparagraph**

> **.1(k) of this Rule.**
> (g) A **concise** statement of the case containing the facts material to the consideration of the questions presented.
> (h) ... **When the portions of the record relied upon under this subparagraph are voluminous, they shall be included in the appendix referred to in subparagraph .1(k) of this Rule.**
> (j) **A direct and concise argument amplifying the reasons relied on for the allowance of the writ**. ..." [Emphasis added].

In the instant Case, it is not difficult to see that the portions of the record relied upon to give this Court jurisdiction to review the orders of the California State Courts on a writ of certiorari are **voluminous**. Accordingly, in pp. (i)-(iii) of her Petition for Writ of Certiorari, the Petitioner has indicated, for each question presented, the page numbers in the Appendix to the said Petition where relevant material appears.

Further, in p. 10 of her Petition for Writ of Certiorari, the Petitioner has mentioned the page numbers in the Appendix to the said Petition where it could be seen the stages in the proceedings in the California State Courts at which the federal questions sought to be reviewed were raised; the method or manner of raising them and the way in which they were passed upon by those courts and such pertinent quotation of specific portions of the record with specific references to the places in the record where the matter appears as would show that the federal questions were timely and properly raised so as to give this Court jurisdiction to review the orders on a writ of certiorari.

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II. PETITIONER HAD PRESENTED FEDERAL QUESTIONS, FEDERAL CONSTITUTIONAL PROVISIONS, FEDERAL STATUTES AND REGULATIONS INVOLVED IN THE CASE BEFORE THE CALIFORNIA STATE COURTS, AND THEY WERE PASSED UPON BY THE CALIFORNIA STATE COURTS

(Ref: Brief in Opposition, pp. 1-2, 10-11, 14-21;
Petition for Writ of Certiorari, pp. (i)-(iii) & 2-19;
Appendix to the Petition for Writ of Certiorari, pp. 53-62, 106-142, 147-179, 183-192 & 194-212).

* As a matter of fact, in Green Bay & Mississippi Canal Co. v. Patten Paper Co. (1898) 172 US 58, 43 L Ed 364, 19 S Ct 97, reh den 173 US 179, 43 L Ed 658, 19 S Ct 316, this Court ruled saying:

"No particular form of words or

phrases is required for assertion of claim of Federal rights to present question for writ of error from Supreme Court of United States to state court, but, if such rights were specially set up or claimed in state court, in such manner as to bring them to attention of that court, it is sufficient".

See also Dewey v. Des Moines (1899) 173 US 193, 43 L Ed 665, 19 S Ct 379; St. Louis, I.M. & S.R. Co. v. Starbird (1917) 243 US 592, 61 L Ed 917, 37 S Ct 462; Bridge Proprietors v. Hoboken Co. (1864) 68 US 116, 17 L Ed 571; Furman v. Nichol (1869) 75 US 44, 19 L Ed 370; Murray v. Charleston (1878) 96 US 432, 24 L Ed 760; Spencer v. Merchant (1888) 125 US 345, 31 L Ed 763, 8 S Ct 921; Copperweld Steel Co. v. Industrial Com. of Ohio (1945) 324 US 780, 89 L Ed 1363, 65 S Ct 1006; Cuyahoga River Power Co. v. Northern Ohio Traction & Light Co. (1920) 252 US 388, 64 L Ed 626, 40 S Ct 404.

* In Louisville & N. R. Co. v. Woodford

(1914) 234 US 46, 58 L Ed 1202, 34 S Ct 739, Atlantic C. L. R. Co. v. Mims (1917) 242 US 532, 61 L Ed 476, 37 S Ct 188 and in Hartford Life Ins. Co. v. Johnson (1919) 249 US 490, 63 L Ed 722, 39 S Ct 336, this Court ruled saying:

> **"In order to raise federal question, federal right had to be asserted according to state procedure".**

* In Kaukauna Water Power Co. v. Green Bay & Mississippi Canal Co. (1891) 142 US 254, 35 L Ed 1004, 12 S Ct 173, this Court ruled saying:

> **"It is not always necessary that Federal question should appear affirmatively on record or in opinion, in order to give Supreme Court of United States jurisdiction to review state judgment, if adjudication of such question was necessarily involved in disposition of case by state court".**

See also Manhattan Life Ins. Co. v. Cohen (1914) 234 US 123, 58 L Ed 1245, 34 S Ct 874.

* In Chicago, R. I. & P. R. Co. v.

Perry (1922) 259 US 548, 66 L Ed 1056, 42 S Ct 524, this Court ruled saying:

> **"If federal question, seasonably raised, was decided by state supreme court, it was immaterial that it was not regarded as being in issue in trial court".**

* In Chapman v. Goodnow's Admr. (1887) 123 US 540, 31 L Ed 235, 8 S Ct 211, Bell's G. R. Co. v. Pennsylvania (1890) 134 US 232, 33 L Ed 892, 10 S Ct 533 and in Chicago, B. & Q. R. Co. v. Chicago (1897) 166 US 226, 41 L Ed 979, 17 S Ct 581, this Court ruled saying:

> **"Decision in terms of Federal question is not essential; if decision of Federal question was necessarily involved in judgment rendered, it is not matter of importance that state court avoided all reference to question".**

* **"Supreme Court of United States has jurisdiction to review decision of state court based upon both Federal and non-Federal ground where non-Federal ground is so interwoven with other as not to be independent matter, or is not of sufficient breadth to sustain judgment without any**

decision of other"

[Abie State Bank v. Bryan (1931) 282 US 765, 75 L Ed 690, 51 S Ct 252].

* **"Alleged conflict between proceedings confirmed by state court and rights claimed unsuccessfully under Constitution of United States, including contention that party is deprived of property without due process of law, presents Federal question"**

[Tregea v. Modesto Irrig. Dist. (1896) 164 US 179, 41 L Ed 395, 17 S Ct 52].

"Case presents Federal question where defense of denial of equal protection of law guaranteed by US Const, 14th Amend, is invoked, and is at least plausible on its face"

[American Sugar Refining Co. v. Louisiana (1900) 179 US 89, 45 L Ed 102, 21 S Ct 43; Fiske v. Kansas (1927) 274 US 380, 71 L Ed 1108, 47 S Ct 655].

* **"Inasmuch as it is right of party to be protected against law which violates constitutional right, whether by its terms or manner of its enforcement, decision which denies such protection gives effect to law and is reviewable**

by Federal Supreme Court*

[General Oil Co. v. Crain (1908) 209 US 211, 52 L Ed 754, 28 S Ct 475].

III. PETITIONER RAISED THE ISSUES SET FORTH IN HER PETITION FOR WRIT OF CERTIORARI BEFORE THE COURTS OF APPEAL OF THE STATE OF CALIFORNIA IN A TIMELY MANNER

(Ref: Brief in Opposition, p. 2, 12, 27-28;
Petition for Writ of Certiorari, pp. 2, 10;
Appendix to the Petition for Writ of Certiorari, pp. 20-21, 27, 29, 30, 31, 36, 64-65, 68-75, 179).

* To appeal a California trial court order or judgment, a party must file a notice of appeal in the trial court. Generally, notice of appeal must be filed within sixty days of the earlier of the following two dates: the mailing of a notice of entry of judgment or appealable

order by the clerk of the court, or the service of such a notice by any party [California Rules of Court, Rule 2]. **Both the party who submitted the judgment or order and the clerk of the court must mail such notices to all the parties to the action** [California Code of Civil Procedure § 664.5]. **In the unlikely event that such notice is not provided, then the notice of appeal must be filed within 180 days of the entry of the order or judgment. In the instant action, the attorney for the Real Party in Interest, Ms. Diana Denman, did not arrange for service of appealable orders of the court signed by the judge on the Petitioner by the clerk of the Norwalk Superior Court. Under the circumstances, the outer limit of 180 days is applicable to the Petitioner in the instant Case for filing Petition for Writ of Mandate and Prohibition with the Court of Appeal of**

the State of California. Accordingly, the Petitioner's Petition for Writ of Mandate and Prohibition that was filed with the Court of Appeal of the State of California on January 3, 1994 was timely in respect of all of the orders of the Superior Court that were made on October 25, 1993, October 13, 1993 and July 14, 1993. As regards the orders of the Superior Court that were made on May 26, 1993, January 8, 1993 and November 13, 1992, the Court of Appeal of the State of California had to necessarily review the said orders in order to review the Superior Court's stay order of October 25, 1993 since the said stay order was totally based on the orders of the Superior Court that were made on May 26, 1993, January 8, 1993 and November 13, 1992. Hence, the Petitioner's Petition for Writ of Mandate and Prohibition that was filed with the Court of Appeal of the State of California on

January 3, 1994 was timely in respect of all of the orders of the Superior Court that were challenged in the said Petition.

* Further, the Supreme Court of the State of California not only found merit in and gave full consideration to Petitioner's Petition for Review that was filed with the said Court on January 18, 1994, but also advised the attorney for the Real Party in Interest via telephone on or about March 1, 1994 to file its Response to the said Petition. Under the circumstances, the Real Party in Interest's allegation of untimeliness of Petitioner's Petition for Writ of Mandate and Prohibition filed with the Court of Appeal of the State of California on January 3, 1994 is MOOT and, this Court is without power to decide such a moot issue [St. Pierre v. United States 319 U.S. 41, 63 S.Ct. 910].

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IV. MONETARY SANCTION ORDERS OF STATE COURTS ARE IMMEDIATELY REVIEWABLE BY THE SUPREME COURT OF THE UNITED STATES

* In Forgay v. Conrad, 6 How. 201, 12 L.Ed. 404, and in Carondelet Canal Co. v. Louisiana, 233 U.S. 362, 34 S.Ct. 627, 58 L.Ed. 1001, **this Court found the requirement of finality to be satisfied by judgments which direct immediate delivery of physical property and which are dissociated from, i.e., are independent of, and unaffected by, another litigation with which they happen to be entangled** [Radio Station WOW v. Johnson 65 S.Ct. 1475 at 1479]. In the instant action, the orders of the Superior Court dated 11/13/92, 01/08/93, 05/26/93, and 10/25/93 entail monetary sanctions against the Petitioner. Since by denying review of Petitioner's Petition for Writ of Mandate and Prohibition, the California

Supreme Court has, in a sense, directed immediate payment of cash by the Petitioner to the Real Party in Interest, and since the said order is independent of Petitioner's main causes of action in the California State Court, the instant case comes squarely within Forgay v. Conrad, supra, and Carondelet Canal Co. v. Louisiana, supra, and hence, the challenge to this Court's jurisdiction at this juncture, cannot be sustained.

* Further, more importantly, none of the said monetary sanction orders of the California superior court is supported by findings of fact and conclusions of law prepared by the judges who made the said orders (viz., Judge James Edson and Judge Daniel Solis Pratt). This is clearly in violation of the due process clause of the 14th Amendment to the U.S. Constitution. There is a plethora of case laws in which this Court has ordered remand of

causes to the courts of first instance whenever judgments or orders unsupported by findings of fact and conclusions of law from the said courts wound up in this Court for review. In APPENDIX "B" to this Reply, Petitioner has assembled 25 such case laws. This presents a federal question which was duly made below, and this Court must consider it.

V. THE "FINALITY" OF JUDGMENT REQUIREMENT OF 28 U.S.C.A. § 1257 IS SATISFIED BY THE CALIFORNIA STATE COURT RULINGS THAT WARRANT REVIEW BY THIS COURT

(Ref: Brief in Opposition, pp.2, 11-12 & 22-26;
APPENDIX "A" to this Reply, pp. 3, 4, 5, 6, 7, 8, 17, 18, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 66 & 67).

* This Court has, in certain circumstances, treated state-court

judgments as final for jurisdictional purposes although there were further proceedings to take place in the state court. Cases of this kind were divided into four categories in Cox Broadcasting Corp. v. Cohn, 420 U.S. 469, 476-477, 95 S.Ct. 1029, 1036, 43 L.Ed.2d 328 (1975), and each category was described. The said caselaw is presented in APPENDIX "A" to this Reply. The parts of the said caselaw that are relevant to the instant case are emphasized using bold print so as to facilitate a quick review. In light of the arguments in the said APPENDIX "A", this Court has jurisdiction to review the California state court rulings in the instant case, for the following reasons:

i) There is a final judgment on the federal issues for purposes of state-court proceedings, and also there are no other federal issues to be resolved. There is thus no probability of piecemeal review

with respect to federal issues and, there is sufficient justification for immediate review of the federal question finally determined in the state courts;

ii) The federal issues finally decided by the California Supreme Court would survive and require decision regardless of the outcome of future state-court proceedings.

iii) The federal claims have been finally decided by the California state courts with further proceedings on the merits in the state courts yet to come. However, later review of the said federal issues cannot be had no matter what the ultimate outcome of the case may be. Thus, if the Petitioner ultimately prevails on the merits, the federal issues will be mooted and if the Petitioner were to lose on the merits, the governing California state law would not permit her again to present her federal claims for review.

iv) The federal statutory and constitutional policies which the Petitioner has identified in her Petition would be undermined by the continuation of the litigation in the state courts.

VI. FURTHER REBUTTALS TO CONTENTIONS RAISED BY THE REAL PARTY IN INTEREST IN ITS BRIEF IN OPPOSITION

* The United States Supreme Court Rules are not inconsistent with the Federal Rules of Civil Procedure and, the Federal Rules of Civil Procedure should be liberally interpreted so far as possible [Federal Rules of Civil Procedure, Rule 1, 28 U.S.C.A.] (Ref: Brief in Opposition, pp. (i)-(ii)).

* The character of reasons enumerated in U.S. Supreme Court Rule 10.1 (a) thru (c) are neither controlling nor do they fully measure the U.S. Supreme Court's discretion in reviewing on writ of

certiorari [U.S. Supreme Court Rule 10.1] (Ref: Brief in Opposition, p. (ii)).

* The U.S. Supreme Court is not bound by holding of the Real Party in Interest that the California superior court's denial of the Petitioner's motion to vacate the arbitration award was rendered moot when the Petitioner filed a request for trial de novo (Ref: Brief in Opposition, p.13). The question of mootness itself is a question of federal law on which this Court is required to pronounce final judgment [U.S.C.A. Const. art. 3; Liner v. Jafco, Inc., 84 S.Ct. 391 (1964)].

* A grant of Petitioner's Petition for Writ of Certiorari by this Court would necessarily entail reversal and vacation of orders made by the California State Courts in the instant case and, as such, Rule 43 of the Supreme Court of the United States is applicable pertaining to

award of costs in favor of the Petitioner (Ref: Brief in Opposition, p. (v)-(vi)).

REMARK

* Petitioner has complied with the page limit of 20 typed and double spaced pages for this Reply to Brief in Opposition, excluding the verbatim quotations set forth in the text of the brief [U.S. Supreme Court Rule 33.3].

CONCLUSION

Based on the foregoing, Petitioner respectfully requests that the instant Petition for Writ of Certiorari be granted.

DATED: September 9, 1994

Respectfully Submitted,

By: V Srinivasan
VATHSALA SRINIVASAN
Petitioner

Appendix

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COX BROADCASTING CORPORATION

et al., Appellants,

v. Martin COHN.

No. 73-938.

Argued Nov. 11, 1974.

Decided March 3, 1975

Father of deceased rape victim brought action against broadcasting company and others to recover damages for invasion of father's right of privacy, which invasion allegedly occurred when broadcasting company, in contravention of Georgia statute, identified the victim during television coverage of the trial of the alleged rapists. The Superior Court, Fulton County, granted father's motion for summary judgment. The Georgia Supreme Court, 231 Ga. 60, 200 S.E.2d 127, held that the statute was not in conflict with the First Amendment but reversed grant of summary judgment and remanded for further proceedings. Defendants sought Supreme Court review by way of appeal. The Supreme Court, Mr. Justice White, held that the court had jurisdiction of the appeal, that a state may not, consistent with the First and Fourteenth Amendments, impose sanctions on the accurate publication of a rape victim's name ob-

tained from judicial records that are maintained in connection with a public prosecution and are themselves open to public inspection, that the interest of privacy fades when the information involved appears on a public record and that where the television reporter based his report on notes taken during court proceedings and obtained rape victim's name from official court documents open to public inspection the constitutional protection of freedom of the press barred Georgia from making his broadcast the basis of civil liability.

Reversed.

Mr. Justice Powell filed a concurring opinion.

Mr. Chief Justice Burger concurred in the judgment.

Mr. Justice Douglas filed an opinion concurring in the judgment.

Mr. Justice Rehnquist filed a dissenting opinion.

1. Courts 394(3)

Supreme Court had jurisdiction over appeal from judg-

ment of the Supreme Court of Georgia holding that Georgia statute making it a misdemeanor to publish or broadcast a name or identity of a rape victim was a legitimate limitation on the right of freedom of expression contained in the First Amendment. Code Ga. § 26-9901; 28 U.S.C.A. §§ 1257(2), 2103; U.S.C.A. Const. Amends. 1, 14.

2. Courts 394(3)

Constitutional validity of Georgia statute making it a misdemeanor to publish or broadcast name or identity of a rape victim was "drawn in question," within meaning of statute governing appellate jurisdiction of the Supreme Court, where not only was such issue raised in the broadcaster's motion for rehearing in tort action but, also, since the Georgia Court relied on the statute as a declaration of the public policy of Georgia that disclosure of a rape victim's name was not to be protected expression, the statute was drawn in question in a manner directly bearing on the merits of the action; **decision in favor of its constitutional validity invoked Supreme Court's appellate jurisdiction. Code Ga. § 26-9901; 28 U.S.C.A. §§ 1257(2), 2103; U.S.C.A.Const. Amends. 1, 14.**

3. Courts 393

Fact that there remain matters to be disposed of by further proceedings in a lower state court after the highest state court has finally determined a federal issue does not mean that the determination of the highest state court is not a "final judgment or decree," within meaning of statute governing Supreme Court review of a final judgment or decree rendered by the highest court of the state; such situations include the case where additional proceedings would not require a decision on other federal questions that might also require review by the Supreme Court at a later date and immediate rather than delayed review would be the best way to avoid the mischief of economic waste and of delayed justice as well as precipitous interference with state litigation. 28 U.S.C.A. § 1257.

See publication Words and Phrases for other judicial constructions and definitions.

4. Courts 393

A judgment or decree of the highest state court on a federal issue is "final," for purposes of Supreme Court review, notwithstanding that there are further proceedings,

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even entire trials, yet to occur in the state court where, for one reason or another, the federal issue is conclusive or the outcome of further proceedings preordained. 28 U.S.C.A. § 1257

See publication Words and Phrases for other judicial constructions and definitions.

5. Courts 393

Where a federal issue, finally decided by the highest court in the state, will survive and require decision regardless of the outcome of future state court proceedings, the judgment or decree of such court on the federal issue is "final," for purposes of United States Supreme Court review, notwithstanding anticipated additional proceedings in a lower state court. 28 U.S.C.A. § 1257.

6. Courts 393

A decision of the highest state court on a federal issue is "final," for purposes of United States Supreme Court review, notwithstanding that additional proceedings are anticipated in a lower state court, where later review of the federal issue cannot be had whatever the ultimate outcome

of the case, such as where governing state law would not permit the litigant to again present his federal claims for review; in such cases, if the party seeking interim review ultimately prevails on the merits the federal issue will be mooted but if he loses on the merits he is denied the right to prevail on the federal issue. 28 U.S.C.A. § 1257.

7. Courts 393

Although a federal issue has been finally decided by the highest state court, with further proceedings pending in which the party seeking review might prevail on the merits on nonfederal grounds, the decision of the highest state court on the federal issue is "final," for purposes of United States Supreme Court review, where reversal of the state court on the federal issue would be preclusive of any further litigation on a relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of the evidence in, the state proceedings still to come; in such cases, if a refusal immediately to review the state court decision might seriously erode federal policy, the Supreme Court will entertain and decide the federal issue. 28 U.S.C.A. § 1257.

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8. Courts 393

Decision of Georgia Supreme Court that statute making it a misdemeanor to publish or broadcast the name or identity of a rape victim was not in conflict with First Amendment was a "final" decree, notwithstanding that further state court proceedings were anticipated or that broadcaster might prevail on nonfederal grounds, since determination was not subject to further review in state court, broadcaster would be liable if elements of the state tort action were proved, litigation could be terminated by Supreme Court's decision on the merits and failure to decide free speech question would leave the Georgia press operating in the shadow of civil and criminal sanctions of a statute whose constitutionality was in serious doubt. Code Ga. § 26-9901; 28 U.S.C.A. §§ 1257(2), 2103; U.S.C.A.Const. Amends. 1, 14.

9. Courts 393

That a petitioner who protests against a decision of a highest state court on a federal question might prevail on the merits on nonfederal grounds in course of further pro-

ceedings anticipated in the state court and, hence, obviate later review of the federal issue is not preclusive of the Supreme Court's jurisdiction under the finality test since if a substantial federal issue has been arguably wrongfully decided and such issue would be determinative of litigation if decided the other way the finality rule is satisfied. 28 U.S.C.A. § 1257.

10. Courts 382(5)

Supreme Court follows a pragmatic approach in determining whether a decision of the highest state court on a federal issue is a "final judgment or decree" within meaning of statute limiting Supreme Court review to final judgment or decrees of the highest court of the state. 28 U.S.C.A. § 1257.

11. Courts 399(1)

On finding that the United States Supreme Court had appellate jurisdiction of appeals from decision of the Supreme Court of Georgia that statute making it a misdemeanor to publish or broadcast the name or identity of a rape victim was not in conflict with the First Amendment, the Court would also

assume jurisdiction over any aspects of the case which would otherwise fall solely within its certiorari jurisdiction. Code Ga. § 26-9901; 28 U.S.C.A. §§ 1257, 1257(2), 2103; U.S.C.A.Const. Amends. 1, 14.

12. Libel and Slander 54

In defamation actions, where the protected interest is personal reputation, the prevailing view is that truth is a defense.

13. Libel and Slander 54, 149

Under the common law, truth was not a complete defense to prosecutions for criminal libel, although it was in civil actions.

14. Constitutional Law 90.1(5), 274.1(4)

Defense of truth is constitutionally required where the subject of an allegedly defamatory publication is a public official or public figure; moreover, the defamed public official or public figure must prove not only that the publication is false but that it was knowingly so or was circulated with reckless disregard for its truth or falsity. U.S.C.A.Const. Amends. 1,

14.

15. Torts 8.5(7)

Where the interest at issue is privacy rather than reputation and the right claimed is to be free from the publication of false or misleading information about one's affairs, the target of the publication must prove knowing or reckless falsehood where the materials published, although assertedly private, are matters of public interest.

16. Constitutional Law 90.1(1), 274.1(2)

A state may not, consistent with the First and Fourteenth Amendments, impose sanctions on the accurate publication of the name of a rape victim obtained from judicial records which are maintained in connection with a public prosecution and which themselves are open to public inspection. U.S.C.A.Const. Amends. 1, 14.

17. Constitutional Law 82, 90.1(8)

Commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions are events of legitimate concern to the public and, consequently, as against

a claim of infringement of right to privacy, fall within the responsibility of the press to report the operations of government. U.S.C.A.Const. Amends. 1, 14.

18. Constitutional Law 90.1(1,5)

The publication of accurate reports of judicial proceedings is accorded a special constitutional protection against claims of invasion of privacy or defamation of character. U.S.C.A.Const. Amends. 1, 14.

19. Torts 8.5(7)

Prevailing law of invasion of privacy generally recognizes that the interests in privacy fades when the information involved already appears on the public record, especially when viewed in terms of the First and Fourteenth Amendments and in light of the public interest in a vigorous press. U.S.C.A.Const. Amends. 1, 14.

20. Constitutional Law 90.1(1)

Right of action under Georgia law for invasion of privacy through public disclosure of the name of a rape victim imposes sanctions on pure expression--the content of a publi-

cation--and not conduct or a combination of speech and nonspeech elements that might otherwise be open to regulation or prohibition. Code Ga. § 26-9901; U.S.C.A.Const. Amends. 1, 14.

21. Libel and Slander 54

Torts 8.5(7)

In determining whether publication of truthful information available on the public record may be considered defamatory or an invasion of privacy, an important consideration is that publication of such matter contains none of the indicia of those limited categories of expression, such as "fighting" words, which are no essential part of any exposition of ideas and which are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality. U.S.C.A.Const. Amends. 1, 14.

22. Constitutional Law 82

By placing information in the public domain on official court records, the state must be presumed to have concluded that the public interest, as opposed to the individual interest in

the right to privacy, is thereby being served.

23. Constitutional Law 90.1(1)

Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media; the freedom of the press to publish that information is of critical importance to our type of government in which the citizenry is final judge of the proper conduct of public business. U.S.C.A.Const. Amends. 1, 14.

24. Constitutional Law

90.1(1), 274.1(2)

The First and Fourteenth Amendments command nothing less than that the states may not impose sanctions for the publication of truthful information obtained in official court records open to public inspection. U.S.C.A.Const. Amends. 1, 14.

25. Constitutional Law 90.1(1)

Any rule that would make public records generally available to media but forbid their publication if offensive to the

sensibilities of the supposed reasonable man is objectionable not only on ground that it would make it very difficult for the media to inform citizens about the public business and yet stay within the law but such rule would invite timidity and self-censorship and likely lead to the suppression of many items that would otherwise be published and that should be made available to the public. U.S.C.A.Const. Amends. 1, 14.

26. Constitutional Law 90.1(1), 274.1 (2)

At the very least, the First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records; if there are privacy interests to be protected in judicial proceedings, states must respond by means which avoid public documentation or other exposure of private information; their political institutions must weigh the interests in privacy with the interests of the public to know and of the press to publish. U.S.C.A.Const. Amends. 1, 14.

27. Constitutional Law 90.1(1)

Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned

for publishing it; in such instance as in others, reliance must rest upon the judgment of those who decide what to publish or broadcast. U.S.C.A.Const. Amends. 1, 14.

28. Constitutional Law 90.1(1), 274.1(2)

Where news staff reporter for television station based his televised report of rape prosecution on notes taken during court proceedings and reporter, who revealed victim's name during the broadcast, obtained victim's name from the indictments handed to him by the clerk of court at his request during a recess in the trial, the protection of freedom of the press provided by the First and Fourteenth Amendments barred Georgia from making his broadcast the basis of civil liability for the tort of public disclosure; imposition of any such liability would penalize pure expression--the contents of a publication. Code Ga. § 26-9901; U.S.C.A.Const. Amends. 1, 14.

Syllabus*

Appellant reporter, employed by a television station owned by appellant broadcasting company, during a news re-

The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

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port of a rape case, broadcast the deceased rape victim's name, which he had obtained from the indictments, which were public records available for inspection. The victim's father, appellee, brought a damages action against appellants in reliance on a Georgia statute making it a misdemeanor to broadcast a rape victim's name, claiming that his right to privacy had been invaded by the broadcast of his daughter's name. The trial court, rejecting appellants' claims that the broadcast was privileged under the First and Fourteenth Amendments, held that the Georgia statute gave a civil remedy to those injured by its violation and granted summary judgment for appellee. On appeal, the Georgia Supreme Court initially held that, while the trial court erred in construing the Georgia statute to extend a cause of action for invasion of privacy, the complaint stated a cause of action for common-law invasion of privacy, and that the First and Fourteenth Amendments did not, as a matter of law, require judgment for appellants. On a motion for rehearing appellants contended that a rape victim's name was a matter of public interest and hence could be published with impunity, but the Supreme Court denied the motion on the ground that the statute declared a state policy that a rape victim's name was not a matter of public concern, and sustained the statute as a

legitimate limitation on the First Amendment's freedom of expression. *Held:*

1. This Court has jurisdiction over the appeal under 28 U.S.C. § 1257(2). Pp. 1036-1042.

(a) The constitutionality of the Georgia statute was "drawn in question" within the meaning of § 1257(2), since, when the Georgia Supreme Court relied upon it as a declaration of state public policy, the statute was drawn in question in a manner directly bearing upon the merits of the action, and the decision upholding its constitutional validity invokes this Court's appellate jurisdiction. P. 1036.

(b) The Georgia Supreme Court's decision is a "final judgment or decree" within the meaning of § 1257. It was plainly final on the federal issue of whether the broadcasts were privileged under the First and Fourteenth Amendments and is not subject to further review in the state courts; and appellants would be liable for damages if the elements of the state cause of action were proved. Moreover, since the litigation could be terminated by this Court's decision on the merits and **a failure to decide the free speech question now will leave the Georgia press operating in the shadow of civil and criminal sanctions of a rule of law and statute whose constitutionality is**

in serious doubt, this Court's reaching the merits comports with its past pragmatic approach in determining finality. Pp. 1037-1042.

2. The State may not, consistently with the First and Fourteenth Amendments, impose sanctions on the accurate publication of a rape victim's name obtained from judicial records that are maintained in connection with a public prosecution and that themselves are open to public inspection. Here, under circumstances where appellant reporter based his televised report upon notes taken during court proceedings and obtained the rape victim's name from official court documents open to pubic inspection, the protection of freedom of the press provided by the First and Fourteenth Amendments bars Georgia from making appellants' broadcast the basis of civil liability in a cause of action for invasion of privacy that penalizes pure expression--the content of a publication. Pp. 1042-1047.

(a) The commission of a crime, prosecutions resulting therefrom, and judicial proceedings arising from the prosecutions are events of legitimate concern to the public and consequently fall within the press' responsibility to report the operations of government. Pp. 1044-1045.

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(b) The interests of privacy fade when the information involved already appears on public record, especially when viewed in terms of the First and Fourteenth Amendments and in light of the public interest in a vigorous press. Pp. 1045-1047.

231 Ga. 60, 200 S.E.2d 127, reversed.

Kirk M. McAlpin, Atlanta, Ga., for appellants.

Stephen A. Land, Decatur, Ga., for appellee.

Mr. Justice WHITE delivered the opinion of the court.

The issue before us in this case is whether, consistently with the First and Fourteenth Amendments, a State may extend a cause of action for damages for invasion of privacy caused by the publication of the name of a deceased rape victim which was publicly revealed in connection with the prosecution of the crime.

I

In August 1971, appellee's 17-year-old daughter was the victim of a rape and did not survive the incident. Six youths were soon indicted for murder and rape. Although there was substantial press coverage of the crime and of subsequent developments, the identity of the victim was not disclosed pending trial, perhaps because of Ga.Code Ann. § 26-9901 (1972),[1] which makes it a misdemeanor to publish or broadcast the name or identity of a rape victim. In April 1972, some eight months later, the six defendants appeared in court. Five pleaded guilty to rape or attempted rape, the charge of murder having been

1. "It shall be unlawful for any news media or any other person to print and publish, broadcast, televise, or disseminate through any other medium of public dissemination or cause to be printed and published, broadcast, televised, or disseminated in any newspaper, magazine, periodical or other publication published in this State or through any radio or television broadcast originating in the State the name or identity of any female who may have been raped or upon whom an assault with intent to commit rape may have been made. Any person or corporation violating the provisions of this section shall, upon conviction, be punished as for a misdemeanor."

Three other States have similar statutes. See Fla. Stat.Ann. §§ 794.03, 794.04 (1965 and Supp.1974-1975); S.C.Code Ann. § 16-81 (1962); Wis.Stat.Ann. § 942.02 (1958). The Wisconsin Supreme Court upheld the constitutionality of a predecessor of § 942.02 in State v. Evjue, 253 Wis. 146, 33 N.W.2d 305 (1948). The South Carolina statute was involved in Nappier v. Jefferson Standard Life Insurance Co., 322 F.2d 502, 505 (CA4 1963), but no constitutional challenge to the statute was made. In Hunter v. Washington Post, 102 Daily Washington L.Rptr. 1561 (1974), the District of Columbia Superior Court denied the defendant's motion for judgment on the pleadings based upon constitutional grounds in an action brought for invasion of privacy resulting form the defendant's publication identifying the plaintiff as a rape victim and giving her name, age, and address.

dropped. The guilty pleas were accepted by the court, and the trial of the defendant pleading not guilty was set for a later date.

In the course of the proceedings that day, appellant Wassell,[2] a reporter covering the incident for his employer, learned the name of the victim from an examination of the indictments which were made available for his inspection in the courtroom.[3] That the name of the victim appears in the indictments and that the indictments were public records available

2. Wassell was employed at the time in question as a news staff reporter for WSB-TV and had been so employed for the prior nine years. His function was to investigate newsworthy stories and make televised news reports. He was assigned the coverage of the trial of the young men accused of the rape and murder of Cynthia Cohn on the morning of April 10, 1972, the day it began, and had not been involved with the story previously. He was present during the entire hearing that day except for the first 30 minutes. App. 16-17.

3. Wassell has described the way in which he obtained the information reported in the broadcast as follows:

"The information on which I prepared the said report was obtained from several sources. First, by personally attending and taking notes of the said trial and the subsequent transfer of four of the six defendants to the Fulton County Jail, I obtained personal knowledge of the events that transpired during the trial of this action and the said transfer of the defendants. Such personal observations and notes were the primary and almost exclusive source of the information upon which the said news report was based. Secondly, during a recess of the said trial, I approached the clerk of the court, who was sitting directly in front of the bench, and requested to see a copy of the indictments. In open court, I was handed the indictments, both the murder and the rape indictments, and was allowed to examine fully this document. As is shown by the said indictments . . . the name of the said Cynthia Cohn appears in clear type. Moreover, no attempt was made by the clerk or anyone else to withhold the name and identity of the victim from me or from anyone else and the said indictments apparently were available for public inspection upon request." *Id.*, at 17-18.

for inspection are not disputed.[4] Later that day, Wassell broadcast over the facilities of station WSB-TV, a television station owned by appellant Cox Broadcasting Corp., a news report concerning the court proceedings. The report named the victim of the crime and was repeated the following day.[5]

In May 1972, appellee brought an action for money damages against appellants, relying on § 26-9901 and claiming that his right to privacy had been invaded by the television broadcasts giving the name of his deceased daughter. Appel-

4. The indictments are in pertinent part as follows:

"THE GRAND JURORS selected, chosen and sworn for the County of Fulton . . . in the name and behalf of the citizens of Georgia, charge and accuse [the defendants] with the offense of:—

"RAPE

"for that said accused, in the County of Fulton and State of Georgia, on the 18th day of August, 1971 did have carnal knowledge of the person of Cynthia Leslie Cohn, a female, forcibly and against her will . . . . " *Id.*, at 22-23.

"THE GRAND JURORS selected, chosen and sworn for the County of Fulton . . . . in the name and behalf of the citizens of Georgia, charge and accuse [the defendants] with the offense of:—

"MURDER

"for that said accused, in the County of Fulton and State of Georgia, on the 18th day of August, 1971 did while in the commission of the offense of Rape, a felony, upon the person of Cynthia Leslie Cohn, a female human being, cause her death by causing her to suffocate . . . ." *Id.*, at 24-25.

5. The relevant portion of the transcript of the televised report reads as follows.

"Six youths went on trial today for the murder-rape of a teenaged girl.

"The six Sandy Springs High School boys were charged with murder and rape in the death of seventeen year old Cynthia Cohn following a drinking party last August 18th.

"The tragic death of the high school girl shocked the entire Sandy Springs community. Today the six boys had their day in court." App. 19-20.

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lants admitted the broadcasts but claimed that they were privileged under both state law and the First and Fourteenth Amendments. The trial court, rejecting appellants' constitutional claims and holding that the Georgia statute gave a civil remedy to those injured by its violation, granted summary judgment to appellee as to liability, with the determination of damages to await trial by jury.

On appeal, the Georgia Supreme Court, in its initial opinion, held that the trial court had erred in construing § 26-9901 to extend a civil cause of action for invasion of privacy and thus found it unnecessary to consider the constitutionality of the statute. 231 Ga. 60, 200 S.E.2d 127 (1973). The court went on to rule, however, that the complaint stated a cause of action "for the invasion of the appellee's right of privacy, or for the tort of public disclosure"--a "common law tort exist[ing] in this jurisdiction without the help of the statute that the trial judge in this case relied on." *Id.*, at 62, 200 S.E.2d, at 130. Although the privacy invaded was not that of the deceased victim, the father was held to have stated a claim for invasion of his own privacy by reason of the publication of his daughter's name. The court explained, however, that liability did not follow as a matter of law and that summary judgment was improper;

whether the public disclosure of the name actually invaded appellee's "zone of privacy," and if so, to what extent, were issues to be determined by the trier of fact. Aslo, "in formulating such an issue for determination by the fact-finder, it is reasonable to require the appellee to prove that the appellants in vaded his privacy with wilful or negligent disregard for the fact that reasonable men would find the invasion highly offensive." *Id.*, at 64, 200 S.E.2d, at 131. The Georgia Supreme Court did agree with the trial court, however, that the First and Fourteenth Amendments did not, as a matter of law, require judgment for appellants. The court concurred with the statement in Briscoe v. Reader's Digest Assn., Inc., 4 Cal.3d 529, 541, 93 Cal.Rptr. 866, 874, 483 P.2d 34, 42 (1971), that "the rights guaranteed by the First Amendment do not require total abrogation of the right to privacy. The goals sought by each may be achieved with a minimum of intrusion upon the other."

Upon motion for rehearing the Georgia court countered the argument that the victim's name was a matter of public interest and could be published with impunity by relying on § 26-9901 as an authoritative declaration of state policy that the name of a rape victim was not a matter of public concern. This time the court felt compelled to determine the constitutionality

of the statute and sustained it as a "legitimate limitation on the right of freedom of expression contained in the First Amendment." The court could discern "no public interest or general concern about the identity of the victim of such a crime as will make the right to disclose the identity of the victim rise to the level of First Amendment protection." 231 Ga., at 68, 200 S.E.2d, at 134.

[1] We postponed decision as to our jurisdiction over this appeal to the hearing on the merits. 415 U.S. 912, 94 S. Ct. 1406, 39 L.Ed.2d 466 (1974). We conclude that the Court has jurisdiction, and reverse the judgment of the Georgia Supreme Court.

II

Appellants invoke the appellate jurisdiction of this Court under 28 U.S.C. § 1257(2) and, if that jurisdictional basis is found to be absent, through a petition for certiorari under 28 U.S.C. § 2103. Two questions concerning our jurisdiction must be resolved: (1) whether the constitutional validity of § 26-9901 was "drawn in question," with the Georgia Supreme Court upholding its validity, and (2) whether the decision from which this appeal has been taken is a "[f]inal judgment or decree."

A

[2] Appellants clearly raised the issue of the constitutionality of § 26-9901 in their motion for rehearing in the Georgia Supreme Court. In denying that motion that court held: "A majority of this court does not consider this statute to be in conflict with the First Amendment." 231 Ga., at 68, 200 S.E. 2d, at 134. Since the court relied upon the statute as a declaration of the public policy of Georgia that the disclosure of a rape victim's name was not to be protected expression, the statute was drawn in question in a manner directly bearing upon the merits of the action, and the decision in favor of its constitutional validity invokes this Court's appellate jurisdiction. Cf. Garrity v. New Jersey, 385 U.S. 493, 495-496, 87 S.Ct. 616, 617-618, 17 L.Ed.2d 562 (1967).

B

Since 1789, Congress has granted this Court appellate jurisdiction with respect to state litigation only after the highest state court in which judgment could be had has rendered a "[f]inal judgment or decree." Title 28 U.S.C. § 1257 retains this limitation on our power to review cases coming from state courts. The Court has noted that "[c]onsiderations of English

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usage as well as those of judicial policy" would justify an interpretation of the final-judgment rule to preclude review "where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State." Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 124, 65 S.Ct. 1475, 1478, 89 L.Ed. 2092 (1945). But the Court there observed that the rule had not been administered in such a mechanical fashion and that there were circumstances in which there has been "a departure from this requirement of finality for federal appellate jurisdiction." *Ibid.*

[3] These circumstances were said to be "very few," *ibid.*; but as the cases have unfolded, the Court has recurringly encountered situations in which the highest court of a State has finally determined the federal issue present in a particular case, but in which there are further proceedings in the lower state courts to come. There are now at least four categories of such cases in which the Court has treated the decision on the federal issue as a final judgment for the purposes of 28 U.S.C. § 1257 and has taken jurisdiction without awaiting the completion of the additional proceedings anticipated in the lower state courts.

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In most, if not all, of the cases in these categories, these additional proceedings would not require the decision of other federal questions that might also require review by the Court at a later date,[6] and immediate rather than delayed review would be the best way to avoid "the mischief of economic waste and of delayed justice," Radio Station WOW, Inc. v. Johnson, *supra*, at 124, 65 S.Ct., at 1478, as well as precipitate interference with state litigation.[7] In the cases in the first two categories

6. Eminent domain proceedings are of the type that may involve an interlocutory decision as to a federal question with another federal question to be decided later. "For in those cases the federal constitutional question embraces not only a taking but a taking on payment of just compensation. A state judgment is not final unless it covers both aspects of that integral problem." North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156, 163, 94 S.Ct. 407, 412, 38 L.Ed.2d 379 (1973). See also Grays Harbor Logging Co. v. Coats-Fordney Logging Co., 243 U.S. 251, 256, 37 S.Ct. 295, 297, 61 L.Ed. 702 (1917); Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 127, 65 S.Ct. 1475, 1480, 89 L.Ed. 2092 (1945).

7. Gillespie v. United States Steel Corp., 379 U.S. 148, 85 S.Ct. 308, 13 L.Ed.2d 199 (1964), arose in the federal courts and involved the requirement of 28 U.S.C. § 1291 that judgments of district courts be final if they are to be appealed to the courts of appeals. In the course of deciding that the judgment of the District Court in the case had been final, the Court indicated its approach to finality requirements:
"And our cases long have recognized that whether a ruling is 'final' within the meaning of § 1291 is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments, and that it is impossible to devise a formula to resolve all marginal cases coming within what might well be called the 'twilight zone' of finality. Because of this difficulty this Court has held that the requirement of finality is to be given a 'practical rather than a technical construction.' Cohen v. Beneficial Industrial Loan Corp. [337 U.S. 541, 546, 69 S.Ct. 1221, 1226, 93 L.Ed. 1528]. See also Brown Shoe Co. v. Untited States, 370 U.S. 294, 306, 82 S.Ct. 1502, 1503, 8 L.Ed.2d 510; Bronson v. Railroad Co., 2 Black 524, 531, 17 L.Ed. 347, 359; Forgay v.

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considered below, the federal issue would not be mooted or otherwise affected by the proceedings yet to be had because those proceedings have little substance, their outcome is certain, or they are wholly unrelated to the federal question. In the other two categories, however, **the federal issue would be mooted if the petitioner or appellant seeking to bring the action here prevailed on the merits in the later state-court proceedings, but there is nevertheless sufficient justification for immediate review of the federal question finally determined in the state courts.**

[4] In the first category are those cases in which there are further proceedings—even entire trials—yet to occur in the state courts but where for one reason or another the federal issue is conclusive or the outcome of further proceedings preordained. In these circumstances, because the case is for all practical purposes concluded, the judgment of the state court on the federal issue is deemed final. In Mills v. Alabama, 384 U.S. 214, 86 S.Ct. 1434, 16

Conrad, 6 How. 201, 203, 12 L.Ed. 404. Dickinson v. Petroleum Conversion Corp., 338 U.S. 507, 511, 70 S.Ct. 322, 324, 94 L.Ed. 299, pointed out that in deciding the question of finality the most important competing considerations are 'the inconvenience and costs of piecemeal review on the one hand and the danger of denying justice by delay on the other.' " 379 U.S., at 152-153, 85 S.Ct., at 311.

L.Ed.2d 484 (1966), for example, a demurrer to a criminal complaint was sustained on federal constitutional grounds by a state trial court. The State Supreme Court reversed, remanding for jury trial. This Court took jurisdiction on the reasoning that the appellant had no defense other than his federal claim and could not prevail at trial on the facts or any nonfederal ground. **To dismiss the appeal "would not only be an inexcusable delay of the benefits Congress intended to grant by providing for appeal to this Court, but it would also result in a completely unnecessary waste of time and energy in judicial systems already troubled by delays due to congested dockets." *Id.*, at 217-218, 86 S.Ct., at 1436 (footnote omitted).[8]**

8. Other cases from state courts where this Court's jurisdiction was sustained for similar reasons include: Organization for a Better Austin v. Keefe, 402 U.S. 415, 418 n., 91 S. Ct. 1575, 1577, 29 L.Ed.2d 1 (1971); Construction Laborers v. Curry, 371 U.S. 542, 550-551, 83 S.Ct. 531, 536-537, 9 L.Ed.2d 514 (1963); Pope v. Atlantic C. L. R. Co., 345 U.S. 379, 382, 73 S.Ct. 749, 750, 97 L.Ed. 1094 (1953); Richfield Oil Corp. v. State Board, 329 U.S. 69, 73-74, 67 S.Ct. 156, 158-159, 91 L.Ed. 80 (1946). In the *Richfield* case the Court said with respect to finality:

"The designation given the judgment by state practice is not controlling. Department of Banking, State of Nebraska v. Pink, 317 U.S. 264, 268, 63 S.Ct. 233, 235, 87, L.Ed. 254. The question is whether it can be said that 'there is nothing more to be decided' (Clark v. Williard, 292 U.S. 112, 118, 54 S.Ct. 615, 618, 78 L.Ed. 1160), that there has been 'an effective determination of the litgation.' Market Street Ry. Co. v. Railroad Commission, 324 U.S. 548, 551, 65 S.Ct. 770, 773, 89 L.Ed. 1171; see Radio Station W.O.W. v. Johnson, 326 U.S. 120, 123-124, 65 S.Ct. 1475, 1477, 89 L.Ed. 2092. That question will be resolved not only by an examination of the entire record (Clark v. Williard, *supra*) but, where

[5] Second, there are cases such as *Radio Station WOW, supra,* and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), in which the federal issue, finally decided by the highest court in the State, will survive and require decision regardless of the outcome of future state-court proceedings. In *Radio Station WOW,* the Nebraska Supreme Court directed the transfer of the properties of a federally licensed radio station and ordered an accounting, rejecting the claim that the transfer order would interfere with the federal license. The federal issue was held reviewable here despite the pending accounting on the "presupposition . . . that the federal questions that could come here have been adjudicated by the State court, and that the accounting which remains to be taken could not remotely give rise to a federal question . . . that may later come here . . .." 326 U.S., at 127, 65 S.Ct., at 1480. The judgment rejecting the federal claim and directing the transfer was deemed "dissociated from a provision for an accounting even though that is decreed in the same order ." *Id.,* at 126, 65 S.Ct., at 1479. Nothing that could happen in the course of the accounting, short of settlement of the case, would foreclose or make

necessary, by resort to the local law to determine what effect the judgment has under the state rules of practice." *Id.*, at 72, 67 S.Ct., at 158.

unnecessary decision on the federal question. Older cases in the Court had reached the same result on similar facts. Carondelet Canal & Nav. Co. v. Louisiana, 233 U.S. 362, 34 S.Ct. 627, 58 L.Ed. 1001 (1914): Forgay v. Conrad, 6 How. 201, 12 L.Ed. 404 (1848). In the latter case, the Court, in an opinion by Mr. Chief Justice Taney, stated that the Court had not understood the final-judgment rule "in this strict and technical sense, but has given [it] a more liberal, and, as we think, a more reasonable construction, and one more consonant to the intention of the legislature." *Id.*, at 203.[9]

[6] In the third category are those situations where the federal claim has been finally decided, with further proceedings on the merits in the state courts to come, but in which later review of the federal issue cannot be had, whatever the ultimate outcome of the case. Thus, in these cases, if the party seeking interim review ultimately prevails on the merits, the federal issue will be mooted; if he were to lose on the merits, however, the governing state law would

9. In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Maryland courts had ordered a new trial in a criminal case but on punishment only, and the petitioner asserted here that he was entitled to a new trial on guilt as well. We entertained the case, saying that the federal issue was separable and would not be mooted by the new trial on punishment ordered in the state courts. *Id.*, at 85 n. 1, 83 S.Ct., at 1995.

not permit him again to present his federal claims for review. The Court has taken jurisdiction in these circumstances prior to completion of the case in the state courts. California v. Stewart, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (decided with Miranda v. Arizona), epitomizes this category. There the state court reversed a conviction on federal constitutional grounds and remanded for a new trial. Although the State might have prevailed at trial, we granted its petition for certiorari and affirmed, explaining that the state judgment was "final" since an acquittal of the defendant at trial would preclude, under state law, an appeal by the State. *Id.*, at 498 n. 71, 86 S.Ct., at 1640.

A recent decision in this category is **North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156, 94 S.Ct. 407, 38 L.Ed.2d 379 (1973)**, in which the Pharmacy Board rejected an application for a pharmacy operating permit relying on a state statute specifying ownership requirements which the applicant did not meet. The State Supreme Court held the statute unconstitutional and remanded the matter to the Board for further consideration of the application, freed from the constraints of the ownership statute. The Board brought the case here, claiming that the statute was constitu-

tionally acceptable under modern cases. After reviewing the various circumstances under which the finality requirement has been deemed satisfied despite the fact that litigation had not terminated in the state courts, we entertained the case over claims that we had no jurisdiction. The federal issue would not survive the remand, whatever the result of the state administrative proceedings. The Board might deny the license on state-law grounds, thus foreclosing the federal issue, and the Court also ascertained that under state law the Board could not bring the federal issue here in the event the applicant satisfied the requirements of state law except for the invalidated ownership statute. Under these circumstances, the issue was ripe for review.[10]

[7] Lastly, there are those situations where the federal issue has been finally decided in the state courts with further proceedings pending in which the party seeking re-

10. Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 69 S.Ct. 1221, 93 L.Ed. 1528 (1949), was a diversity action in the federal courts in the course of which there arose the question of the validity of a state statute requiring plaintiffs in stockholder suits to post security for costs as a prerequisite to bringing the action. The District Court held the state law inapplicable, the Court of Appeals reversed, and **this court, after granting certiorari, held that the issue of security for costs was separable from and independent of the merits and that if review were to be postponed until the termination of the litigation, "it will be too late effectively to review the present order and the rights conferred by the statute, if it is applicable, will have been lost, probably irreparably,"** *Id.*, **at 546, 69 S.Ct., at 1225.**

view here might prevail on the merits on nonfederal grounds, thus rendering unnecessary review of the federal issue by this Court, and where reversal of the state court on the federal issue would be preclusive of any further litigation on the relevant cause of action rather than merely controlling the nature and character of, or determining the admissibility of evidence in, the state proceedings still to come. In these circumstances, if a refusal immediately to review the state court decision might seriously erode federal policy, the Court has entertained and decided the federal issue, which itself has been finally determined by the state courts for purposes of the state litigation.

In Construction Laborers v. Curry, 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514 (1963) the state courts temporarily enjoined labor union picketing over claims that the National Labor Relations Board had exclusive jurisdiction of the controversy. The Court took jurisdiction for two independent reasons. First, the power of the state court to proceed in the face of the preemption claim was deemed an issue separable from the merits and ripe for review in this Court, particularly "when postponing review would seriously erode the national labor policy requiring the subject matter of respondents' cause to be

heard by the . . . Board, not by the state courts." *Id.*, at 550, 83 S.Ct., at 536. Second, the Court was convinced that in any event the union had no defense to the entry of a permanent injunction other than the preemption claim that had already been ruled on in the state courts. Hence the case was for all practical purposes concluded in the state tribunals.

In Mercantile National Bank v. Langdeau, 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d 523 (1963), two national banks were sued, along with others, in the courts of Travis County, Tex. The claim asserted was conspiracy to defraud an insurance company. The banks as a preliminary matter asserted that a special federal venue statute immunized them from suit in Travis County and that they could properly be sued only in another county. Although trial was still to be had and the banks might well prevail on the merits, the Court, relying on ***Curry*, entertained the issue as a "separate and independent matter, anterior to the merits and not enmeshed in the factual and legal issues comprising the plaintiff's cause of action." *Id.*, at 558, 83 S.Ct., at 522.** Moreover, it would serve the policy of the federal statute "to determine now in which state court appellants may be tried rather than to subject them . . . to long and complex litigation which may all be for naught if consider-

ation of the preliminary question of venue is postponed until the conclusion of the proceedings." *Ibid.*

Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974) is the latest case in this category.[11] There a candidate for public office sued a newspaper for refusing, allegedly contrary to a state statute, to carry his reply to the paper's editorial critical of his qualifications. The trial court held the act unconstitutional, denying both injunctive relief and damages. The State Supreme Court reversed, sustaining the statute against the challenge based upon the First and Fourteenth Amendments and remanding the case for a trial and appropriate relief, including damages. The newspaper brought the case here. We sustained our jurisdiction, relying on the principles elaborated in the North Dakota case and observing:

"Whichever way we were to decide on the merits, it

11. Meanwhile **Hudson Distributors v. Eli Lilly, 377 U.S. 386, 84 S.Ct. 1273, 12 L.Ed.2d 394 (1964),** another case of this genre, had been decided. There a retailer sued to invalidate a state fair trade act as inconsistent with the federal antitrust laws and not saved by a federal statute authorizing state fair trade legislation under certain conditions. The defendant manufacturer cross-petitioned for enforcement of the state act against the plaintiff-retailer. The trial court struck down the statute, but a state appellate court reversed and remanded for trial on the cross-petition. The Ohio Supreme Court affirmed that decision. Relying on *Curry* and Mercantile National Bank v. Langdeau, 371 U.S. 555, 83 S.Ct. 520, 9 L.Ed.2d 523 (1963), this Court found the state-court judgment to be ripe for review, although the retailer might prevail at the trial. 377 U.S., at 389 n. 4, 84 S.Ct., at 1276.

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would be intolerable to leave unanswered, under these circumstances, an important question of freedom of the press under the First Amendment; an uneasy and unsettled constitutional posture of § 104.38 could only further harm the operation of a free press. Mills v. Alabama, 384 U.S. 214, 221-222, 86 S.Ct. 1434, 1438, 16 L.Ed.2d 484 (1966) (Douglas, J., concurring). See also Organization for a Better Austin v. Keefe, 402 U.S. 415, 418 n., 91 S.Ct. 1575, 1577, 29 L.Ed.2d 1 (1971) ." 418 U.S., at 247 n. 6, 94 S.Ct., at 2834.[12]

[8-11] In light of the prior cases, we conclude that we have jurisdiction to review the judgment of the Georgia Supreme Court rejecting the challenge under the First and Fourteenth Amendments to the state law authorizing damage suits against the press for publishing the name of a rape victim whose identity is revealed in the course of a public prosecution. **The Georgia Supreme Court's judgment is plainly final on the federal issue and is not subject to further review in the state courts.** Appellants will be liable for damages if the elements of

12. The import of the Court's holding in *Tornillo* is underlined by its citation of the concurring opinion in Mills v. Alabama. There, Mr. Justice Douglas, joined by Mr. Justice Brennan, stated that **even if the appellant had a defense and might prevail at trial, jurisdiction was properly noted in order to foreclose unwarranted restrictions on the press should the state court's constitutional judgment prove to be in error.**

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the state cause of action are proved. They may prevail at trial on nonfederal grounds, it is true, but if the Georgia court erroneously upheld the statute, there should be no trial at all. Moreover, **even if appellants prevailed at trial and made unnecessary further consideration of the constitutional question, there would remain in effect the unreviewed decision of the State Supreme Court that** a civil action for publishing the name of a rape victim disclosed in a public judicial proceeding may go forward despite the First and Fourteenth Amendments. Delaying final decision of the First Amendment claim until after trial will "leave unanswered . . . an important question of freedom of the press under the First Amendment," "an uneasy and unsettled constitutional posture [that] could only further harm the operation of a free press." *Tornillo, supra*, 418 U.S., at 247 n. 6, 94 S.Ct., at 2834. On the other hand, if we now hold that the First and Fourteenth Amendments bar civil liability for broadcasting the victim's name, this litigation ends. Given these factors—that the litigation could be terminated by our decision on the merits[13] and that a **failure to decide the question now**

13. Mr. Justice REHNQUIST, *post*, at 1052-1053, is correct in saying that this factor involves consideration of the merits in determining jurisdiction. But it does so only to the extent of determining that the issue is substantial and only in the context that if the state court's final decision on the federal issue is incorrect, federal law forecloses further proceedings in the state

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will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt—we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality. See Gillespie v. United States Steel Corp., 379 U.S. 148, 85 S.Ct. 308, 13 L.Ed.2d 199 (1964); Radio Station WOW, Inc. v. Johnson, 326 U.S., at 124, 65 S.Ct., at 1478; Mills v. Alabama, 384 U.S., at 221-222, 86 S.Ct., at 1438-1439 (Douglas, J., concurring).[14]

court. **That the petitioner who protests against the state court's decision on the federal question might prevail on the merits on nonfederal grounds in the course of further proceedings anticipated in the state court and hence obviate later review of the federal issue here is not preclusive of our jurisdiction. *Curry, Langdeau, North Dakota State Board of Pharmacy*, California v. Stewart, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (decided with Miranda v. Arizona), and Miami Herald Publishing Co. v. Tornillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974), make this clear. In those cases, the federal issue having been decided, arguably wrongly, and being determinative of the litigation if decided the other way, the finality rule was satisfied.**

The author of the dissent, a member of the majority in *Tornillo*, does not disavow that decision. He seeks only to distinguish it by indicating that the First Amendment issue at stake there was more important and pressing than the one here. This seems to embrace the thesis of that case and of this one as far as the approach to finality is concerned, even though the merits and the avoidance doctrine are to some extent involved.

14. In finding that we have appellate jurisdiction, we also take jurisdiction over any aspects of the case which would otherwise fall solely within our certiorari jurisdiction. See Flournoy v. Wiener, 321 U.S. 253, 263, 64 S.Ct. 548, 553, 88 L.Ed. 708 (1944); Prudential Insurance Co. v. Cheek, 259 U.S. 530, 547, 42 S.Ct. 516, 523, 66 L.Ed. 1044 (1922); cf. Palmore v. United States, 411 U.S. 389, 397 n. 6, 93 S.Ct. 1670, 1676, 36 L.Ed.2d 342 (1973); Mishkin v. New York, 383 U.S. 502, 512, 86 S.Ct. 958, 965, 16 L.Ed.2d 56 (1966).

III

Georgia stoutly defends both § 26-9901 and the State's common-law privacy action challenged here. Its claims are not without force, for powerful arguments can be made, and have been made, that however it may be ultimately defined, there *is* a zone of privacy surrounding every individual, a zone within which the State may protect him from intrusion by the press, with all its attendant publicity.[15] Indeed, the central thesis of the root article by Warren and Brandeis, The Right to Privacy, 4 Harv.L.Rev. 193, 196 (1890), was that the press was overstepping its prerogatives by publishing essentially private information and that there should be a remedy for the alleged abuses.[16]

15. See T. Emerson, The System of Freedom of Expression 544-562 (1970); Konvitz, Privacy and the Law: A Philosophical Prelude, 31 Law & Contemp.Prob. 272 (1966); Bloustein, Privacy as an Aspect of Human Dignity: An Answer to Dean Prosser, 39 N.Y. U.L. Rev. 962 (1964).

16. "Of the desirability–indeed of the necessity–of some such protection [of the right of privacy], there can, it is believed, be no doubt. The press is overstepping in every direction the obvious bounds of propriety and of decency. Gossip is no longer the resource of the idle and of the vicious, but has become a trade, which is pursued with industry as well as effrontery. To satisfy a prurient taste the details of sexual relations are spread broadcast in the columns of the daily papers. To occupy the indolent, column upon column is filled with idle gossip, which can only be procured by intrusion upon the domestic circle. The intensity and complexity of life, attendant upon advancing civilization, have rendered necessary some retreat from the world, and man, under the refining influence of culture, has become more sensitive to publicity, so that solitude and privacy have become more essential to the individual; but modern enterprise and invention have, through

More compellingly, the century has experienced a strong tide running in favor of the so-called right of privacy. In 1967, we noted that "[i]t has been said that a 'right of privacy' has been recognized at common law in 30 States plus the District of Columbia and by statute in four States." Time, Inc. v. Hill, 385 U.S. 374, 383 n. 7, 87 S.Ct. 534, 539, 17 L.Ed.2d 456. We there cited the 1964 edition of Prosser's Law of Torts. The 1971 edition of that same source states that "[i]n one form or another, the right of privacy is by this time recognized and accepted in all but a very few jurisdictions." W. Prosser, Law of Torts 804 (4th.Ed.) (footnote omitted). Nor is it irrelevant here that the right of privacy is no recent arrival in the jurisprudence of Georgia, which has embraced the right in some form since

invasions upon his privacy, subjected him to mental pain and distress, far greater than could be inflicted by mere bodily injury. Nor is the harm wrought by such invasions confined to the suffering of those who may be made the subjects of journalistic or other enterprise. In this, as in other branches of commerce, the supply creates the demand. Each crop of unseemly gossip, thus harvested, becomes the seed of more, and, in direct proportion to its circulation, results in a lowering of social standards and of morality. Even gossip apparently harmless, when widely and persistently circulated, is potent for evil. It both belittles and perverts. It belittles by inverting the relative importance of things, thus dwarfing the thoughts and aspirations of a people. When personal gossip attains the dignity of print, and crowds the space available for matters of real interest to the community, what wonder that the ignorant and thoughtless mistake its relative importance. Easy of comprehension, appealing to that weak side of human nature which is never wholly cast down by the misfortunes and frailties of our neighbors, no one can be surprised that it unsurps the place of interest in brains capable of other things. Triviality destroys at once robustness of thought and delicacy of feeling. No enthusiasm can flourish, no generous impulse can survive under its blighting influence."

1905 when the Georgia Supreme Court decided the leading case of Pavesich v. New England Life Ins. Co., 122 Ga. 190, 50 S.E. 68.

These are impressive credentials for a right of privacy,[17] but we should recognize that we do not have at issue here an action for the invasion of privacy involving the appropriation of one's name or photograph, a physical or other tangible intrusion into a private area, or a publication of otherwise private information that is also false although perhaps not defamatory. The version of the privacy tort now before us—termed in Georgia "the tort of public disclosure," 231 Ga., at 60, 200 S.E.2d, at 130—is that in which the plaintiff claims the right to be free from unwanted publicity about his private affairs, which, although wholly true, would be offensive to a person of ordinary sensibilities. Because the gravamen of the claimed injury is the publication of information, whether true or not, the dissemination of which is embarrassing or otherwise painful to an individual, it is here that claims of privacy most directly confront the constitutional freedoms of speech and press. The face-off is apparent, and the appellants urge upon us the broad holding

17. See also Time, Inc. v. Hill, 385 U.S. 374, 404, 87 S.Ct. 534, 550, 17 L.Ed.2d 456 (1967) (opinion of Harlan, J.); *id.*, at 412-415, 87 S.Ct., at 554-556 (Fortas, J., dissenting).

that the press may not be made criminally or civilly liable for publishing information that is neither false nor misleading but absolutely accurate, however damaging it may be to reputation or individual sensibilities.

[12-15] It is true that in defamation actions, where the protected interest is personal reputation, the prevailing view is that truth is a defense;[18] and the message of New York Times Co. v. Sullivan, 376 U.S. 254, 94 S.Ct. 710, 11 L.Ed.2d 686 (1964); Garrison v. Louisiana, 379 U.S. 64, 85 S.Ct. 209, 13 L.Ed. 2d 125 (1964); Curtis Publishing Co. v. Butts, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967), and like cases is that the defense of truth is constitutionally required where the subject of the publication is a public official or public figure. What is more, the defamed public official or public figure must prove not only that the publication is false but that it was knowingly so or was circulated with reckless disregard for its truth or falsity. Similarly, where the interest at issue is privacy rather

18. See Restatement (Second) of Torts § 582 (Tent.Draft No. 20, Apr. 25, 1974); W. Prosser, Law of Torts § 116 (4th ed. 1971). Under the common law, truth was not a complete defense to prosecutions for criminal libel, although it was in civil actions. Several jurisdictions in this country have provided, however, that the defense of truth in civil actions requires a showing that the publication was made for good motives or for justifiable ends. See *id.*, at 796-797.

than reputation and the right claimed is to be free from the publication of false or misleading information about one's affairs, the target of the publication must prove knowing or reckless falsehood where the materials published, although assertedly private, are "matters of public interest." Time, Inc. v. Hill, *supra*, 385 U.S., at 387-388, 87 S.Ct., at 541-542.[19]

The Court has nevertheless carefully left open the question whether the First and Fourteenth Amendments require that truth be recognized as a defense in a defamation action brought by a private person as distinguished from a public official or public figure. *Garrison* held that where criticism is of a public official and his conduct of public business, "the interest in private reputation is overborne by the larger public interest, secured by the Constitution, in the dissemination of truth," 379 U.S., at 73, 85 S.Ct., at 215 (footnote omitted), but recognized that "different interests may be involved where purely private libels, totally unrelated to public affairs, are concerned; there-

19. In another "false light" invasion of privacy case before us this Term, Cantrell v. Forest City Publishing Co., 419 U.S. 245, 250-251, 95 S.Ct. 465, 469, 42 L.Ed.2d 419 (1974), we observed that we had, in that case, "no occasion to consider whether a State may constitutionally apply a more relaxed standard of liability for a publisher or broadcaster of false statements injurious to a private individual under a false-light theory of invasion of privacy, or whether the constitutional standard announced in Time, Inc. v. Hill applies to all false-light cases. Cf. Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789."

fore, nothing we say today is to be taken as intimating any views as to the impact of the constitutional guarantees in the discrete area of purely private libels." *Id.*, at 72 n. 8, 85 S.Ct., at 215. In similar fashion, Time, Inc. v. Hill, *supra*, expressly saved the question whether truthful publication of very private matters unrelated to public affairs could be constitutionally proscribed. 385 U.S., at 383 n. 7, 87 S.Ct., at 539.

[16] Those precedents, as well as other considerations, counsel similar caution here. In this sphere of collision between claims of privacy and those of the free press, the interests on both sides are plainly rooted in the traditions and significant concerns of our society. Rather than address the broader question whether truthful publications may ever be subjected to civil or criminal liability consistently with the First and Fourteenth Amendments, or to put it another way, whether the State may ever define and protect an area of privacy free from unwanted publicity in the press, it is appropriate to focus on the narrower interface between press and privacy that this case presents, namely, whether the State may impose sanctions on the accurate publication of the name of a rape victim obtained from public records—more specifically, from judicial records which are

maintained in connection with a public prosecution and which themselves are open to public inspection. We are convinced that the State may not do so.

In the first place, in a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations. Great responsibility is accordingly placed upon the news media to report fully and accurately the proceedings of government, and official records and documents open to the public are the basic data of governmental operations. Without the information provided by the press most of us and many of our representatives would be unable to vote intelligently or to register opinions on the administration of government generally. With respect to judicial proceedings in particular, the function of the press serves to guarantee the fairness of trials and to bring to bear the beneficial effects of public scrutiny upon the administration of justice. See Sheppard v. Maxwell, 384 U.S. 333, 350, 86 S.Ct. 1507, 1515, 16 L.Ed.2d 600 (1966).

[17] Appellee has claimed in this litigation that the efforts of the press have infringed his right to privacy by

broadcasting to the world the fact that his daughter was a rape victim. The commission of crime, prosecutions resulting from it, and judicial proceedings arising from the prosecutions, however, are without question events of legitimate concern to the public and consequently fall within the responsibility of the press to report the operations of government.

[18] The special protected nature of accurate reports of judicial proceedings has repeatedly been recognized. This Court, in an opinion written by Mr. Justice Douglas, has said:

"A trial is a public event. What transpires in the court room is public property. If a transcript of the court proceedings had been published, we suppose none would claim that the judge could punish the publisher for contempt. And we can see no difference though the conduct of the attorneys, of the jury, or even of the judge himself, may have reflected on the court. *Those who see and hear what transpired can report it with impunity.* There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." Craig v. Harney, 331 U.S. 367, 374, 67 S.Ct. 1249, 1254, 91 L.Ed. 1546 (1947) (emphasis added).

See also Sheppard v. Maxwell, *supra*, 384 U.S., at 362-363, 86 S.Ct., at 1522; Estes v. Texas, 381 U.S. 532, 541-542, 85 S.Ct. 1628, 1632-1633, 14L.Ed.2d 543 (1965); Pennekamp v. Florida, 328 U.S. 331, 66 S.Ct. 1029, 90 L.Ed. 1295 (1946); Bridges v. California, 314 U.S. 252, 62 S.Ct. 190, 86 L.Ed. 192 (1941).

The developing law surrounding the tort of invasion of privacy recognizes a privilege in the press to report the events of judicial proceedings. The Warren and Brandeis article, *supra*, noted that the proposed new right would be limited in the same manner as actions for libel and slander where such a publication was a privileged communication: "the right to privacy is not invaded by any publication made in a court of justice . . . and (at least in many jurisdictions) reports of any such proceedings would in some measure be accorded a like privilege."[20]

The Restatement of Torts, § 867, embraced an action for privacy.[21] Tentative Draft No. 13 of the Second Restatement of Torts, §§ 652A-652E, divides the privacy tort into four branches;[22]

20. 4 Harv.L.Rev., at 216-217.

21. Restatement of Torts § 867 (1939).

22. Restatement (Second) of Torts §§ 652A-652E (Tent.Draft No. 13, Apr. 27, 1967). The four branches are: unreasonable intrusion upon the seclusion of another (§ 652B), appropriation of the other's name or likeness (§ 652C),

and with respect to the wrong of giving unwanted publicity about private life, the commentary to § 652D states: "There is no liability when the defendant merely gives further publicity to information about the plaintiff which is already public. Thus there is no liability for giving publicity to facts about the plaintiff's life which are matters of public record . . ."[23] The same is true of the separate tort of physically or otherwise intruding upon the seclusion or private affairs of another. Section 652B, Comment *c*, provides that "there is no liability for the examination of a public record concerning the plaintiff, or of documents which the plaintiff is required to keep and make available for public inspection."[24] According to this draft, ascertaining and publishing the contents of public records are simply not within the reach of these kinds of privacy actions.[25]

unreasonable publicity given to the other's private life" (§ 652D), and "publicity which unreasonably places the other in a false light before the public" (§ 652E). See § 652A. The same categorization is suggested in W. Prosser, Law of Torts § 117 (4th ed. 1971); Prosser, Privacy, 48 Calif. L.Rev. 383 (1960).

23. Restatement (Second) of Torts, *supra*, § 652D, Comment *c*, at 114.

24. *Id.*, § 652B, Comment *c*, at 104.

25. See also W. Prosser, Law of Torts, *supra*, at 810-811. For decisions emphasizing as a defense to actions claiming invasion of privacy the fact that the information in question was derived from official records available to the public, see Hubbard v. Journal Publishing Co., 69 N.M. 473, 368 P.2d 147 (1962) (information regarding sexual assault by a boy upon his younger sister derived from official juvenile-court records open to public inspection);

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[19-24] Thus even the prevailing law of invasion of privacy generally recognizes that the interests in privacy fade when the information involved already appears on the public record. The conclusion is compelling when viewed in terms of the First and Fourteenth Amendments and in light of the public interest in a vigorous press. The Georgia cause of action for invasion of privacy through public disclosure of the name of a rape victim imposes sanctions on pure expression—the content of a publication—and not conduct or a combination of speech and nonspeech elements that might otherwise be open to regulation or prohibition. See United States v. O'Brien, 391 U.S. 367, 376-377, 88 S.Ct. 1673, 1678-1679, 20 L.Ed.2d 672 (1968). The publication of truthful information available on the public record contains none of the indicia of those limited categories of expression, such as "fighting" words, which "are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived

Edmiston v. Time, Inc., 257 F.Supp. 22 (SDNY 1966) (fair and true report of court opinion); Bell v. Courier-Journal & Louisville Times Co., 402 S.W.2d 84 (Ky.1966); Lamont v. Commissioner of Motor Vehicles, 269 F.Supp. 880 (SDNY), aff'd, 386 F.2d 449 (CA2 1967), cert. denied, 391 U.S. 915, 88 S.Ct. 1811, 20 L.Ed.2d 654 (1968); Frith v. Associated Press, 176 FSupp. 671 (EDSC 1959); Meetze v. Associated Press, 230 S.C. 330, 95 S.E.2d 606 (1956); Thompson v. Curtis Publishing Co., 193 F.2d 953 (CA3 1952); Garner v. Triangle Publication, 97 F.Supp. 546 (SDNY 1951); Berg v. Minneapolis Star & Tribune Co., 79 F. Supp. 957 (Minn. 1948).

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from them is clearly outweighed by the social interest in order and morality." Chaplinsky v. New Hampshire, 315 U.S. 568, 572, 62 S.Ct. 766, 769, 86 L.Ed. 1031 (1942) (footnote omitted).

By placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served. Public records by their very nature are of interest to those concerned with the administration of government, and a public benefit is performed by the reporting of the true contents of the records by the media. The freedom of the press to publish that information appears to us to be of critical importance to our type of government in which the citizenry is the final judge of the proper conduct of public business. In preserving that form of government the First and Fourteenth Amendments command nothing less than that the States may not impose sanctions on the publication of truthful information contained in official court records open to public inspection.

[25-27] We are reluctant to embark on a course that would make public records generally available to the media but forbid their publication if offensive to the sensibilities of the supposed reasonable man. Such a rule would make it very

difficult for the media to inform citizens about the public business and yet stay within the law. The rule would invite timidity and self-censorship and very likely lead to the suppression of many items that would otherwise be published and that should be made available to the public. At the very least, the First and Fourteenth Amendments will not allow exposing the press to liability for truthfully publishing information released to the public in official court records. If there are privacy interests to be protected in judicial proceedings, the States must respond by means which avoid public documentation or other exposure of private information. Their political institutions must weigh the interests in privacy with the interests of the public to know and of the press to publish.[26] Once true information is disclosed in public court documents open to public inspection, the press cannot be sanctioned for publishing it. In this instance as in others, reliance must rest upon the judgment of those who decide what to publish or broadcast. See Miami Herald Publishing Co. v. Tornillo, 418 U.S., at 258, 94 S.Ct., at 2840.

26. We mean to imply nothing about any constitutional questions which might arise from a state policy not allowing access by the public and press to various kinds of official records, such as records of juvenile-court proceedings.

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[28] Appellant Wassell based his televised report upon notes taken during the court proceedings and obtained the name of the victim from the indictments handed to him at his request during a recess in the hearing. Appellee has not contended that the name was obtained in an improper fashion or that it was not on an official court document open to public inspection. Under these circumstances, the protection of freedom of the press provided by the First and Fourteenth Amendments bars the State of Georgia from making appellants' broadcast the basis of civil liability.[27]

Reversed.

Mr. Chief Justice BURGER concurs in the judgment.

Mr. Justice POWELL, concurring.

27. Appellants have contended that whether they derived the information in question from public records or instead through their own investigation, the First and Fourteenth Amendments bar any sanctions from being imposed by the State because of the publication. Because appellants have prevailed on more limited grounds, we need not address this broader challenge to the validity of § 26-9901 and of Georgia's right of action for public disclosure.

I join in the Court's opinion, as I agree with the holding and most of its supporting rationale.[1] My understanding of some of our decisions concerning the law of defamation, however, differs from that expressed in today's opinion. Accordingly, I think it appropriate to state separately my views.

I am in entire accord with the Court's determination that the First Amendment proscribes imposition of civil liability in a privacy action predicated on the truthful publication of matters contained in open judicial records. But my impression of the role of truth in defamation actions brought by private citizens differs from the Court's. The Court identifies as an "open" question the issue of "whether the First and Fourteenth Amendments require that truth be recognized as a defense in a defamation action brought by a private person as distinguished from a public official or a public figure." *Ante*, at 1044. In my view, our recent decision in Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), largely resolves that issue.

Gertz is the most recent of a line of cases in which this Court has sought to resolve the conflict between the State's

1. At the outset, I note my agreement that Miami Herald Publishing Co., v. Tornillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974), supports the conclusion that the issue presented in this appeal is final for review. 28 U.S.C. § 1257.

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desire to protect the reputational interests of its citizens and the competing commands of the First Amendment. In each of the many defamation actions considered in the 10 years following New York Times Co. v. Sullivan, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964), state law provided that truth was a defense to the action.[2] Today's opinion reiterates what we previously have recognized, see Garrison v. Louisiana, 379 U.S. 64, 74, 85 S.Ct. 209, 215, 13 L.Ed.2d 125 (1964)—that the defense of truth is constitutionally required when the subject of the alleged defamation is a public figure. *Ante*, at 1043. Indeed, even if not explicitly recognized, this determination is implicit in the Court's articulation of a standard of recovery that rests on knowing or

2. In Time, Inc. v. Hill, 385 U.S. 374, 87 S.Ct. 534, 17 L.Ed2d 456 (1967), the Court considered a state cause of action that afforded protection against unwanted publicity rather than damage to reputation through the publication of false statements of fact. In such actions, however, the State also recognized that truth was an absolute defense against liability for publication of reports concerning newsworthy people or events. *Id.*, at 383, 87 S.Ct. at 539. The Court's abandonment of the "[matter] of 'general or public interest'" standard as the determinative factor for deciding whether to apply the *New York Times* malice standard to defamation litigation brought by private individuals, Gertz v. Robert Welch, Inc., 418 U.S. 323, 346, 94 S.Ct. 2997, 3010, 41 L.Ed.2d 789 (1974), see also Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 79, 91 S.Ct. 1811, 1837, 29 L. Ed.2d 296 (1971) (Marshall, J., dissenting), calls into question the conceptual basis of Time, Inc. v. Hill. In neither *Gertz* nor our more recent decision in Cantrell v. Forest City Publishing Co., 419 U.S. 245, 95 S.Ct. 465, 42 L.Ed.2d 419 (1974), however, have we been called upon to determine whether a State may constitutionally apply a more relaxed standard of liability under a false-light theory of invasion of privacy. See *id.*, at 250-251, 95 S.Ct. at 469; *Gertz, supra*, 418 U.S., at 348, 94 S.Ct., at 3011; *ante*, at 1044 n. 19.

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reckless disregard of the truth. I think that the constitutional necessity of recognizing a defense of truth is equally implicit in our statement of the permissible standard of liability for the publication or broadcast of defamatory statements whose substance makes apparent the substantial danger of injury to the reputation of a private citizen.

In *Gertz* we held that the First Amendment prohibits the States from imposing strict liability for media publication of allegedly false statements that are claimed to defame a private individual. While providing the required "breathing space" for First Amendment freedoms, the *Gertz* standard affords the States substantial latitude in compensating private individuals for wrongful injury to reputation.[3] "[S]o long as they do not impose liability without fault, the States may define for themselves the appropriate standard of liability for a publisher or broadcaster of defamatory falsehood injurious to a private individual." 418 U.S., at 347, 94 S.Ct., at 3010. The requirement

3. Our recent opinions dealing with First Amendment limitations on state defamation actions all center around the common premise that while the Constitution requires that false ideas be corrected only by the competitive impact of other ideas, the First Amendment affords no constitutional protection for false statements of fact. See *Gerts, supra,* 418 U.S., at 339-340, 94 S.Ct., at 3006-3007. Beginning with this common assumption, the decisions of this Court have undertaken to identify a standard of care with respect to the truth of the published facts that will afford the required "breathing space" for First Amendment values.

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that the state standard of liability be related to the defendant's failure to avoid publication of "defamatory falsehood" limits the grounds on which a normal action for defamation can be brought. It is fair to say that if the statements are true, the standard contemplated by *Gertz* cannot be satisfied.

In *Gertz* we recognized the need to establish a broad rule of general applicability, acknowledging that such an approach necessarily requires treating alike cases that involve differences as well as similarities. *Id.*, at 343-344, 94 S.Ct., at 3008-3009. Of course, no rule of law is infinitely elastic. In some instances state actions that are denominated actions in defamation may in fact seek to protect citizens from injuries that are quite different from the wrongful damage to reputation flowing from false statements of fact. In such cases, the Constitution may permit a different balance to be struck. And, as today's opinion properly recognizes, causes of action grounded in a State's desire to protect privacy generally implicate interests that are distinct from those protected by defamation actions. But in cases in which the interests sought to be protected are similar to those considered in *Gertz*, I view that opinion as requiring that the truth be recognized as a complete defense.

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Mr. Justice DOUGLAS, concurring in the judgment.

I agree that the state judgment is "final," and I also agree in the reversal of the Georgia court.* On the merits, the case for me is on all fours with New Jersey State Lottery Comm'n v. United States, 491 F.2d 219 (CA3 1974), vacated and remanded, 420 U.S. 371, 95 S.Ct. 941, 43 L.Ed.2d 260 (1975). For the reasons I stated in my dissent from our disposition of that case, there is no power on the part of government to suppress or penalize the publication of "news of the day."

Mr. Justice REHNQUIST, dissenting.

Because I am of the opinion that the decision which is

* While I join in the narrow result reached by the Court, I write separately to emphasize that I would ground that result upon a far broader proposition, namely, that the First Amendment, made applicable to the States through the Fourteenth, prohibits the use of state law "to impose damages for merely discussing public affairs . . . ." New York Times co. v. Sullivan, 376 U.S. 254, 295, 84 S.Ct. 710, 734, 11 L.Ed.2d 686 (1964) (Black, J., concurring). See also Cantrell v. Forest City Publishing Co., 419 U.S. 245, 254, 95 S.Ct. 465, 471, 42 L.Ed.2d 419 (1974) (Douglas, J., dissenting); Gertz v. Robert Welch, Inc., 418 U.S. 323, 355, 94 S.Ct. 2997, 3014, 41 L.Ed.2d 789 (1974) (Douglas, J., dissenting); Time, Inc. v. Hill, 385 U.S. 374, 398, 87 S.Ct. 534, 547, 17 L.Ed.2d 456 (1967) (Black, J., concurring); id., at 401, 87 S.Ct., at 548 (Douglas, J., concurring); Garrison v. Louisiana, 379 U.S. 64, 80, 85 S.Ct. 209, 218, 13 L.Ed.2d 125 (1964) (Douglas J., concurring). In this context, of course, "public affairs" must be broadly construed—indeed, the term may be said to embrace "any matter of sufficient general interest to prompt media coverage . . . ." Gertz v. Robert Welch, Inc., *supra*, 418 U.S., at 357 n. 6, 94 S.Ct., at 3016 (Douglas J., dissenting). By its now-familiar process of balancing and accommodating First Amendment freedoms with state or individual interests, the Court raises a specter of liability which must inevitably induce self-censorship by the media, thereby inhibiting the rough-and-tumble discourse which the First Amendment so clearly protects.

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the subject of this appeal is not a "final" judgment or decree, as that term is used in 28 U.S.C. § 1257, I would dismiss this appeal for want of jurisdiction.

Radio Station WOW, Inc. v. Johnson, 326 U.S. 120, 65 S.Ct. 1475, 89 L.Ed. 2092 (1945), established that in a "very few" circumstances review of state-court decisions could be had in this Court even though something "further remain[ed] to be determined by a State court". *Id.*, at 124, 65 S.Ct., at 1478. Over the years, however, and despite vigorous protest by Mr. Justice Harlan,[1] this Court has steadily discovered new exceptions to the finality requirement, such that they can hardly any longer be described as "very few". Whatever may be the unexpressed reasons for this process of expansion, see, *e. g.*, Hudson Distributors v. Eli Lilly, 377 U.S. 386, 401, 84 S.Ct. 1273, 1283, 12 L.Ed.2d 394 (1964) (Harlan, J., dissenting), it has frequently been the subject of no more formal an express explanation than cursory citations to preceding cases in the line. Especially is this true of cases in which the Court, as it does today, relies on

1. See Construction Laborers v. Curry, 371 U.S. 542, 553, 83 S.Ct. 531, 538, 9 L.Ed.2d 514 (1963); Mercantile National Bank v. Langdeau, 371 U.S. 555, 572, 83 S.Ct. 520, 529, 9 L.Ed.2d 523 (1963); Hudson Distributors v. Eli Lilly, 377 U.S. 386, 395, 84 S.Ct. 1273, 1279, 12 L.Ed.2d 394 (1964); Organization for a Better Austin v. Keefe, 402 U.S. 415, 420, 91 S.Ct. 1575, 1578, 29 L.Ed.2d 1 (1971).

Construction Laborers v. Curry, 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514 (1963).[2] Although the Court's opinion today does accord detailed consideration to this problem, I do not believe that the reasons it expresses can support its result.

I

The Court has taken what it terms a "pragmatic" approach to the finality problem presented in this case. In so doing, it has relied heavily on Gillespie v. United States Steel Corp., 379 U.S. 148, 85 S.Ct. 308, 13 L.Ed.2d 199 (1964). As the Court acknowledges, *ante*, at 1037 n. 7, *Gillespie* involved 28 U.S.C. § 1291, which restricts the appellate jurisdiction of the federal courts of appeals to "final decisions of the district courts." Although acknowledging this distinction, the Court accords it no importance and adopts *Gillespie's* approach without any consideration of whether the finality requirement for this Court's jurisdiction over a "judgment or decree" of a state court is grounded on more serious concerns than is the limitation of court of appeals jurisdiction to final "decisions" of the district

2. See, *e. g.*, American Radio Assn. v. Mobile S. S. Assn., 419 U.S. 215, 217 n. 1, 95 S.Ct. 409, 411, 42 L.Ed.2d 399 (1974); Hudson Distributors v. Eli Lilly, *supra*, 377 U.S., at 389 n. 4, 84 S.Ct., at 1276.

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courts.[3] I believe that the underlying concerns are different, and that the difference counsels a more restrictive approach when §1257 finality is at issue.

According to *Gillespie*, the finality requirement is imposed as a matter of minimizing "the inconvenience and costs of piecemeal review". This proposition is undoubtedly sound so long as one is considering the administration of the federal court system. Were judicial efficiency the only interest at stake there would be less inclination to challenge the Court's resolution in this case, although, as discussed below, I have serious reservations that the standards the Court has formulated are effective for achieving even this single goal. The case before us, however, is an appeal from a state court, and this fact introduces additional interests which must be accommodated in fashioning any ex-

3. The textual distinction between §§ 1291 and 1257, the former referring to "final decisions," while the latter refers to "final judgments or decrees," first appeared in the Evarts Act, Act of Mar. 3, 1891, 26 Stat. 826, which created the courts of appeals. Section 6 of that Act provided that courts of appeals should exercise appellate jurisdiction over "final decision" of the federal trial courts. The House version of the Act had referred to "final judgment or decree," 21 Cong.Rec. 3402 (1890), but the Senate Judiciary Committee changed the wording without formal explanation. See *id.*, at 10218. Perhaps significance can be attached to the fact that under the House bill the courts of appeals would have been independent of the federal trial courts, being manned by full-time appellate judges; the Senate version, on the other hand, generally provided that court of appeals duties would be performed by the trial judges within each circuit. See Act of Mar. 3, 1891, § 3, 26 Stat. 827.

The first Judiciary Act, Act of Sept. 24, 1789, 1 Stat. 73, used the terms "judgment" and "decree" in defining the appellate jurisdiction of both the Supreme Court, § 25, and the original circuit courts. § 22.

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ception to the literal application of the finality requirement. I consider § 1257 finality to be but one of a number of congressional provisions reflecting concern that uncontrolled federal judicial interference with state administrative and judicial functions would have untoward consequences for our federal system.[4] This is by no means a novel view of the § 1257 finality requirement. In Radio Station WOW, Inc. v. Johnson, 326 U.S., at 124, 65 S.Ct., at 1478, Mr. Justice Frankfurter's opinion for the Court explained the finality requirement as follows:

"This requirement has the support of considerations generally applicable to good judicial administration. It avoids the mischief of economic waste and of delayed justice. Only in very few situations, where intermediate rulings may carry serious public consequences, has there been a departure from this requirement of finality for federal appellate jurisdiction. *This prerequisite to review derives added force when the jurisdiction of this Court is invoked to upset the decision of a State court.* Here we are in the realm of potential conflict between the

4. See, *e. g.*, 28 U.S.C. § 1341 (limitation on power of district courts to enjoin state taxing systems); 28 U.S.C. § 1739 (requiring that state judicial proceedings be accorded full faith and credit in federal courts); 28 U.S.C. §§ 2253-2254 (prescribing various restrictions on federal habeas corpus for state prisoners); 28 U.S.C. § 2281 (three-judge district court requirement); 28 U.S.C. § 2283 (restricting power of federal courts to enjoin state-court proceedings).

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courts of two different governments. And so, ever since 1789, Congress has granted this Court the power to intervene in State litigation only after 'the highest court of a State in which a decision in the suit could be had' has rendered a 'final judgement or decree.' Section 237(a) of the Judicial Code, 28 U.S.C. § 344(a), 28 U.S.C.A. § 344(a). *This requirement is not one of those technicalities to be easily scorned. It is an important factor in the smooth working of our federal system."* (Emphasis added).

In Republic Natural Gas Co. v. Oklahoma, 334 U.S. 62, 67, 68 S.Ct. 972, 976, 92 L.Ed. 1212 (1948), Mr. Justice Frankfurter, speaking for the Court, again expressed this view:

"This prerequisite for the exercise of the appellate powers of this Court is especially pertinent when a constitutional barrier is asserted against a State court's decision on matters peculiarly of local concern. Close observance of this limitation upon the Court is not regard for a strangling technicality. History bears ample testimony that it is an important factor in securing harmonious State-federal relations."

That comity and federalism are significant elements of § 1257 finality has been recognized by other members of the Court as well, perhaps most notably by Mr. Justice Harlan. See,

e. g., Hudson Distributors v. Eli Lilly, 377 U.S., at 397-398, 84 S.Ct., at 1280-1281 (dissenting); Mercantile National Bank v. Langdeau, 371 U.S. 555, 572, 83 S.Ct. 520, 529, 9 L.Ed.2d 523 (1963) (dissenting). In the latter dissent, he argued that one basis of the finality rule was that it foreclosed "this Court from passing on constitutional issues that may be dissipated by the final outcome of a case, thus helping to keep to a minimum undesirable federal-state conflicts." One need cast no doubt on the Court's decision in such cases as *Langdeau* to recognize that Mr. Justice Harlan was focusing on a consideration which should be of significance in the Court's disposition of this case.

"Harmonious state-federal relations" are no less important today than when Mr. Justice Frankfurter penned *Radio Station WOW* and *Republic Gas Co.* Indeed, we have in recent years emphasized and reemphasized the importance of comity and federalism in dealing with a related problem, that of district court interference with ongoing state judicial proceedings. See Younger v. Harris, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed.2d 669 (1971); Samuels v. Mackell, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed.2d 688 (1971). Because these concerns are important, and because they provide "added force" to § 1257's finality requirement, I believe that the Court has erred by simply importing the

approach of cases in which the only concern is efficient judicial administration.

II

But quite apart from the considerations of federalism which counsel against an expansive reading of our jurisdiction under § 1257, the Court's holding today enunciates a virtually formless exception to the finality requirement, one which differs in kind from those previously carved out. By contrast, Construction Laborers v. Curry, *supra*, and Mercantile National Bank v. Langdeau, *supra*, are based on the understandable principle that where the proper forum for trying the issue joined in the state courts depends on the resolution of the federal question raised on appeal, **sound judicial administration requires that such a question be decided by this Court, if it is to be decided at all, sooner rather than later in the course of the litigation. Organization for a Better Austin v. Keefe, 402 U.S. 415, 91 S.Ct. 1575, 29 L.Ed.2d 1 (1971), and Mills v. Alabama, 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed.2d 484 (1966), rest on the premise that where as a practical matter the state litigation has been concluded by the decision of the State's highest court, the fact that in terms of state proce-**

dure the ruling is interlocutory should not bar a determination by this Court of the merits of the federal question.

Still other exceptions, as noted in the Court's opinion, have been made where the federal question decided by the highest court of the State is bound to survive and be presented for decision here regardless of the outcome of future state-court proceedings, *Radio Station WOW, supra;* Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), and for the situation in which later review of the federal issue cannot be had, whatever the ultimate outcome of the subsequent proceedings directed by the highest court of the State, California v. Stewart, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966) (decided with Miranda v. Arizona); North Dakota State Board of Pharmacy v. Snyder's Drug Stores, Inc., 414 U.S. 156, 94 S.Ct. 407, 38 L.Ed.2d 379 (1973). While the totality of these exceptions certainly indicates that **the Court has been willing to impart to the language "final judgment or decree" a great deal of flexibility, each of them is arguably consistent with the intent of Congress in enacting § 1257, if not with the language it used, and each of them is relatively workable in practice.**

To those established exceptions is now added one so

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formless that it cannot be paraphrased, but instead must be quoted:

"Given these factors—that the litigation could be terminated by our decision on the merits and that a failure to decide the question now will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt—we find that reaching the merits is consistent with the pragmatic approach that we have followed in the past in determining finality." *Ante*, at 1041.

There are a number of difficulties with this test. One of them is the Court's willingness to look to the merits. It is not clear from the Court's opinion, however, exactly how great a look at the merits we are to take. On the one hand, the Court emphasizes that if we reverse the Supreme Court of Georgia the litigation will end, *ante*, at 1041, and it refers to cases in which the federal issue has been decided "arguably wrongly." *Ante*, at n. 13. On the other hand, it claims to look to the merits "only to the extent of determining that the issue is substantial." *Ibid.* If the latter is all the Court means, then the inquiry is no more extensive than is involved when we determine whether a case is appropriate for plenary consideration; but if no more is meant,

our decision is just as likely to be a costly intermediate step in the litigation as it is to be the concluding event. If, on the other hand, the Court really intends its doctrine to reach only so far as cases in which our decision in all probability will terminate the litigation, then the Court is reversing the traditional sequence of judicial decision making. Heretofore, it has generally been thought that a court first assumed jurisdiction of a case, and then went on to decide the merits of the questions it presented. But henceforth in determining our own jurisdiction we may be obliged to determine whether or not we agree with the merits of the decision of the highest court of a State.

Yet another difficulty with the Court's formulation is the problem of transposing to any other case the requirement that "failure to decide the question now will leave the press in Georgia operating in the shadow of the civil and criminal sanctions of a rule of law and a statute the constitutionality of which is in serious doubt." *Ante*, at 1041. Assuming that we are to make this determination of "serious doubt" at the time we note probable jurisdiction of such an appeal, is it enough that the highest court of the State has ruled against any federal constitutional claim? If that is the case, then because § 1257 by other language imposes that requirement, we will have completely

read out of the statute the limitation of our jurisdiction to a "final judgment or decree." Perhaps the Court's new standard for finality is limited to cases in which a First Amendment freedom is at issue. The language used by Congress, however, certainly provides no basis for preferring the First Amendment, as incorporated by the Fourteenth Amendment, to the various other Amendments which are likewise "incorporated," or indeed for preferring any of the "incorporated" Amendments over the due process and equal protection provisions which are embodied literally in the Fourteenth Amendment.

Another problem is that in applying the second prong of its test, the Court has not engaged in any independent inquiry as to the consequences of permitting the decision of the Supreme Court of Georgia to remain undisturbed pending final state-court resolution of the case. This suggests that in order to invoke the benefit of today's rule, the "shadow" in which an appellant must stand need be neither deep nor wide. In this case nothing more is at issue than the right to report the name of the victim of a rape. No hindrance of any sort has been imposed on reporting the fact of a rape or the circumstances surrounding it. Yet the Court unquestioningly places this issue on a par with the core First Amendment interest involved in Miami Herald Publishing

Co. v. Tornillo, 418 U.S. 241, 94 S.Ct. 2831, 41 L.Ed.2d 730 (1974), and Mills v. Alabama, *supra*, that of protecting the press in its role of providing uninhibited political discourse.[5]

But the greatest difficulty with the test enunciated today is that it totally abandons the principle that constitutional issues are too important to be decided save when absolutely necessary, and are to be avoided if there are grounds for decision of lesser dimension.[6] The long line of cases which established this rule makes clear that it is a principle primarily designed, not to benefit the lower courts, or state-federal relations, but rather to safeguard this Court's own process of constitutional adjudication.

"Considerations of propriety, as well as long-established practice, demand that we refrain from passing upon the constitutionality of an act of Congress unless obliged to do so in the proper performance of our judicial function, when the

5. As pointed out in *Tornillo*, 418 U.S., at 247 n. 6, 94 S.Ct., at 2834, not only did uncertainty about Florida's "right of reply" statute interfere with this important press function, but delay by this Court would have left the matter unresolved during the impending 1974 elections. In *Mills*, the Court observed that "there is practically universal agreement that a major purpose of [the First] Amendment was to protect the free discussion of governmental affairs." 384 U.S., at 218, 86 S.Ct., at 1437.

6. One important distinction between this case and Construction Laborers v. Curry, 371 U.S. 542, 83 S.Ct. 531, 9 L.Ed.2d 514 (1963), has already been discussed, *supra*, at 1051-1052. Another is that the federal issue here is constitutional, whereas that in *curry* was statutory.

question is raised by a party whose interests entitle him to raise it." Blair v. United States, 250 U.S. 273, 279, 39 S.Ct. 468, 470, 63 L.Ed. 979 (1919).

"The Court will not 'anticipate a question of constitutional law in advance of the necessity of deciding it.' Liverpool, N. Y. & Phila. Steamship Co. v. Emigration Commissioners, 113 U.S. 33, 39, 5 S.Ct. 352, 355, 28 L.Ed. 899; Abrams v. Van Schaick, 293 U.S. 188, 55 S.Ct. 135, 79 L.Ed. 278; Wilshire Oil Co. v. United States, 295 U.S. 100, 55 S.Ct. 673, 79 L.Ed. 1329. 'It is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case.' Burton v. United States, 196 U.S. 283, 295, 25 S.Ct. 243, 49 L.Ed. 482." Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 346-347, 56 S.Ct. 466, 80 L.Ed. 688 (1936) (Brandeis, J., concurring).

In this case there has yet to be an adjudication of liability against appellants, and unlike the appellant in Mills v. Alabama, they do not concede that they have no nonfederal defenses. Nonetheless, the Court rules on their constitutional defense. Far from eschewing a constitutional holding in advance of the necessity for one, the Court construes § 1257 so that it may virtually rush out and meet the prospective constitutional litigant as he approaches our doors.

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III

This Court is obliged to make preliminary determinations of its jurisdiction at the time it votes to note probable jurisdiction. At that stage of the proceedings, prior to briefing on the merits or oral argument, such determinations must of necessity be based on relatively cursory acquaintance with the record of the proceedings below. The need for an understandable and workable application of a jurisdictional provision such as § 1257 is therefore far greater than for a similar interpretation of statutes dealing with substantive law.[7] We, of course, retain the authority to dismiss a case for want of a final judgment after having studied briefs on the merits and having heard oral argument, but I can recall not a single instance of such a disposition during the last three Terms of the Court. While in theory this may be explained by saying that during these Terms we have never accorded plenary consideration to a § 1257 case which was not a "final judgment or decree," I would guess it just

7. Cf. United States v. Sisson, 399 U.S. 267, 307, 90 S.Ct. 2117, 2139, 26 L.Ed.2d 608 (1970):

"Clarity is to be desired in any statute, but in matters of jurisdiction it is especially important. Otherwise the courts and the parties must expend great energy, not on the merits of dispute settlement, but on simply deciding whether a court has the power to hear a case."

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as accurate to say that after the Court has studied briefs and heard oral argument, it has an understandable tendency to proceed to a decision on the merits in preference to dismissing for want of jurisdiction. It is thus especially disturbing that the rule of this case, unlike the more workable and straightforward exceptions which the Court has previously formulated, will seriously compound the already difficult task of accurately determining, at a preliminary stage, whether an appeal from a state-court judgment is a "final judgment or decree."

A further aspect of the difficulties which the Court is generating is illustrated by a petition for certiorari recently filed in this Court, Time, Inc. v. Firestone, No. 74-944. The case was twice before the Florida Supreme Court. That court's first decision was rendered in December 1972; it rejected Time's First Amendment defense to a libel action, and remanded for further proceedings on state-law issues. The second decision was rendered in 1974, and dealt with the state-law issues litigated on remand. Before this Court, Time seeks review of the First Amendment defense rejected by the Florida Supreme Court in December 1972. Under the Court's decision today, one could conclude that the 1972 judgment was itself a final decision from which review might have been had. If it was, then peti-

tioner Time is confronted by 28 U.S.C. § 2101(c), which restricts this Court's jurisdiction over state civil cases to those in which review is sought within 90 days of the entry of a reviewable judgment.

I in no way suggest either my own or the Court's views on our jurisdiction over Time, Inc. v. Firestone. This example is simply illustrative of the difficulties which today's decision poses not only for this Court, but also for a prudent counsel who is faced with an adverse interlocutory ruling by a State's highest court on a federal issue asserted as a dispositive bar to further litigation. I suppose that such counsel would be unwilling to presume that this Court would flout both the meaning of words and the command of Congress by employing loose standards of finality to obtain jurisdiction, but strict ones to prevent its loss. He thus would be compelled to judge his situation in light of today's formless, unworkable exception to the finality requirement. I would expect him frequently to choose to seek immediate review in this Court, solely as a matter of assuring that his federal contentions are not lost for want of timely filing. The inevitable result will be totally unnecessary additions to our docket and serious interruptions and delays of the state adjudicatory process.

Although unable to persuade my Brethren that we do not have in this case a final judgment or decree of the Supreme Court of Georgia, I nonetheless take heart from the fact that we are concerned here with an area in which "*stare decisis* has historically been accorded considerably less than its usual weight." Gonzalez v. Employees Credit Union, 419 U.S. 90, 95, 95 S.Ct. 289, 293, 42 L.Ed.2d 249 (1974). I would dismiss for want of jurisdiction.

CITATIONS OF CASE LAWS PERTINENT TO FILING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW BY THE TRIAL COURT JUDGE

1. Berquido v. Eastern Air Lines, Inc.

369 F.2d 874 (3rd Cir. 1966)

"Agreement between parties that District Court need not enter findings of fact was not effective, since requirement of rule requiring such findings is mandatory, the findings in part serving as a necessary aid to reviewing court [FRCP, Rule 52(a), 28 U.S.C.A.]".

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2. Davis v. United States

422 F.2d 1139 (5th Cir. 1970)

"Where trial court made no findings of fact or conclusions of law in connection with grant of preliminary injunction enjoining attempts to obstruct students' attendance in classes and interference with operation of public school system, order would be vacated and cause remanded [FRCP, Rule 52(a), 28 U.S.C.A.]".

APPENDIX "B"

3. Employers' Liability Assur. Corp. v. Weeden

274 F.2d 809 (5th Cir. 1960)

"Where trial court has failed to find facts and state its conclusions of law thereon, reviewing courts cannot pass upon errors specified and judgment will be vacated and cause remanded for making of appropriate findings and conclusions [FRCP, Rule 52(a), 28 U.S.C.A.]".

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4. Fehringer v. Bluebeard's Castle, Inc.

395 F.2d 851 (3rd Cir. 1968)

"A nonjury trial resulting in insufficient findings of fact and conclusions of law to indicate the bases of the trial court's decision requires the judgment to be vacated and the cause remanded".

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5. Group Asso. Plans, Inc. v. Colquhoun

466 F.2d 469 (DC Cir. 1972)

"Failure of District Judge to state facts on which he based his legal conclusion as to liability was fatal defect which required remand for such statement".

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6. Hydrospace-Challenger, Inc. v. Tracor/Mas, Inc.

520 F.2d 1030 (5th Cir. 1975)

"Findings and conclusions must be expressed with sufficient particularity to allow reviewing court to determine rather than speculate that law has been correctly applied [FRCP, Rules 52, 52(a), 28 U.S.C.A.]".

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7. Jefferies v. Harris County Community Action Asso.

615 F.2d 1025 (5th Cir. 1980)

"In absence of any attempt by District Court to evaluate plaintiff's claim in light of legal framework governing claims of discrimination, Appeals Court is unable to fully understand issues to be resolved on appeal and must remand case because District Court's findings do not satisfy Rule 52(a)".

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8. Kruger v. Purcell

300 F.2d 830 (3rd Cir. 1962)

"Under rule providing that in actions tried upon the facts

without a jury, the court shall find the facts specifically and state separately its conclusions of law thereon, trial court is required to find the facts on every material issue, including relevant subsidiary issues, and to state separately its conclusions thereon with clarity, and findings of fact and conclusions of law must be sufficient to indicate basis of trial court's decision [FRCP, Rule 52(a), 28 U.S.C.A.]".

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9. Lemelson v. Kellogg Co.

440 F.2d 986 (2nd Cir. 1971)

"Where District Court failed to comply with letter and spirit of Rule 52(a) it was necessary for Court of Appeals to remand cause of action to District Court for compliance with Rule 52(a)".

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10. Louisiana Mut. Ins. Co. v. Tweed

74 U.S. 44, 7 Wall.44, 19 L.Ed. 65

"An opinion which did not profess to be statement of facts but which merely contained reasons for judgment and recited some parts of testimony by way of comment in support of judgment without stating facts found from

evidence stated, could not be accepted in Supreme Court as sufficient finding of facts".

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11. Nickerson v. Travelers Ins. Co.

437 F.2d 113 (5th Cir. 1971)

"Where the district court in nonjury case did not specially find the facts and state separately its conclusions of law thereon as required by rule, Court of Appeals was unable to give meaningful review to judgment, which would be vacated and cause remanded for entry of findings of fact and conclusions of law on specified matters [FRCP, Rule 52(a), 28 U.S.C.A.]".

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12. Panama Mail S.S. Co. v. Vargas

(1930) 281 US 670, 74 L Ed 1105,

50 S Ct 448

"Where review was not confined to questions of law, evidence was conflicting, and trial court had made no distinct findings of fact Supreme Court would vacate decrees below and remand case to trial court for findings of fact or retrial as found necessary".

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13. H. Prang Trucking Co. v. Local Union No. 469

613 F.2d 1235 (3rd Cir. 1980)

"In all actions tried upon the facts without a jury or with an advisory jury, it is mandatory that trial court make its findings in accordance with applicable rule [FRCP, Rule 52(a), 28 U.S.C.A.]".

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14. Rainey v. Rainey

131 F.2d 349 (DC Cir. 1942)

"Where trial judge in wife's action for maintenance and in husband's action for absolute divorce made no findings and the record was so inadequate as to make impossible the determination of several points urged by appellant, the decrees would be reversed and remanded for trial and proper determination [FRCP, Rule 52, 28 U.S.C.A. following § 723c]".

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15. Roberts v. Ross

344 F.2d 747 (3rd Cir. 1965)

"District judges should properly formulate findings of fact and conclusions of law in course of and as part of decision-

making process and articulate and file them at time of announcing decision; it is not proper to announce decision and then direct counsel for prevailing party to prepare and submit findings of fact, conclusions of law and form of judgment, although judge may invite counsel to submit proposed findings and conclusions to assist him in formulating his own findings and reaching his decision [FRCP, Rule 52(a), 28 U.S.C.A.]".

"Purpose of rule relating to findings is to require judge to formulate and articulate findings and conclusions in course of his consideration and determination of case and as part of his decision-making process, so that he himself may be satisfied that he has dealt fully and properly with all issues in case before he decides it and so that parties involved and reviewing court may be fully informed as to bases of decision when it is made [FRCP, Rule 52(a), 28 U.S.C.A.]".

"Findings and conclusions prepared by party and adopted by trial judge without change are likely to be looked at by reviewing court more narrowly

and given less weight on review than if they are work product of judge himself or at least bear evidence that he has given them careful study and revision [FRCP, Rule 52(a), 28 U.S.C.A.]".

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16. Schilling v. Schwitzer-Cummins Co.

142 F.2d 82 (DC Cir. 1944)

"Even if it were an improper practice for trial court to direct counsel to prepare findings, such fact would not authorize the appellate court to review evidence de novo, but proper procedure would be to remand case to trial court and direct that new findings be made".

"It is not function of appellate court to assume the powers of trial court [Jud. Code § 128(a), 28 U.S.C.A. § 225(a); D.C. Code 1940, §§ 11-208, 17-101 et seq.]".

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17. Sellers v. Wollman

510 F.2d 119 (5th Cir. 1975)

"Where, because of absence of findings of fact and conclusions of law by trial court, Court of Appeals could

not determine whether judgment below was founded upon erroneous or correct view of state or federal law or whether record would support factual basis for decision, judgment would be vacated and action remanded with orders that district court enter findings of fact and conclusions of law and judgment accordingly [FRCP, Rule 52(a), 28 U.S.C.A.]".

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18. SquirtCo v. Seven-Up Co.

628 F.2d 1086 (8th Cir. 1980)

"It is error for trial court to fail to make findings of fact, even though no requests for such findings were made [FRCP, Rule 52(a), 28 U.S.C.A.]".

"Where trial court does not make findings which are sufficient to indicate factual basis for its ultimate conclusion, appropriate procedure is to vacate judgment and remand for such findings [FRCP, Rule 52(a), 28 U.S.C.A.]".

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19. United States v. Claycraft Co.

408 F.2d 366 (6th Cir. 1969)

"Where appeal came on to be

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heard and it appeared that District Court's opinion did not satisfy requirements of Rule 52(a) in that facts were not found specially to permit appropriate review by Court of Appeals and to support ultimate conclusions of trial court, judgment would be vacated and cause remanded to District Court with directions to make findings of facts, state conclusions of law, and enter proper judgment".

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20. U.S. Use of Belcon, Inc. v. Sherman Constr. Co.

800 F.2d 1321 (4th Cir. 1986)

"An appellate review, to determine whether any rulings by district court are clearly erroneous can only be undertaken when trial court has made its findings of fact with sufficient detail and exactness".

"To satisfy demand of Federal Rule of Civil Procedure, requiring that court shall find the facts specifically and state separately its conclusions of law, a trial court must do more than announce statements of ultimate fact, the court must support

its rulings by spelling out the subordinate facts on which it relies".

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21. Woods Constr. Co. v. Pool Constr. Co.

314 F2d 405 (10th Cir. 1963)

"Appellate courts, under Rule 52(a), do not have power to review evidence in record and supply findings of fact necessary to determine issues".

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22. Hill v. Ohio Casualty Ins. Co.

104 F2d 695 (6th Cir. 1939)

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Jackson County v. Alton R. Co.

105 F2d 633 (8th Cir. 1939).

"Rule 52(a) does not relieve court of duty to make special findings of fact and to state separate conclusions of law, but emphasizes that duty; however, no requests for such findings need be made by parties".

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23. Hazeltine Corp. v. Crosley Corp.

130 F2d 344 (6th Cir. 1942)

"Without findings of fact from trial court, appellate court should not pass upon controverted issue of fact not determined below".

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24. Panaview Door & Window Co. v. Reynolds Metals Co.

255 F2d 920 (9th Cir. 1958)

"Federal Rules of Procedure give Court of Appeals no power to make new independent findings upon evidence which Court of Appeals did not hear".

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25. Waialua Agr. Co. v. Maneja

178 F2d 603 (9th Cir. 1949)

"Both parties' mutual disregard of error consisting of absence of findings of fact in declaratory judgment action could not avail to have Court of Appeals consider judgment not founded in fact".